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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46855-2019
Plaintiff-Respondent,)	
)	BANNOCK COUNTY NO. CR-2014-9610
v.)	
)	
JESSE E. FISHER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jesse E. Fisher appeals from the district court's order revoking probation and executing a reduced sentence of eight years, with two years fixed, for attempted strangulation. He asserts that the district court abused its discretion by revoking probation.

Statement of the Facts & Course of Proceedings

In 2014, Mr. Fisher pleaded guilty to attempted strangulation and the district court imposed a unified sentence of eight years, with three years fixed, and the court retained jurisdiction. (R., p.171.) Following the period of retained jurisdiction, the court suspended the

sentence and placed Mr. Fisher on probation for a period of four years. (R., p.177.) In 2017, Mr. Fisher admitted to violating his probation and the court continued him on probation. (R., p.222.)

Approximately a year later, in December, 2018, the State filed a report of probation violation and Mr. Fisher again admitted to violating the terms and conditions of his probation. (R., pp.227, 238.) The district court revoked Mr. Fisher's probation but reduced the sentence to eight years, with two years fixed. (R., p.241.) Mr. Fisher appealed. (R., p.249.) He asserts that the district court abused its discretion by revoking probation.

ISSUE

Did the district court abuse its discretion when it revoked Mr. Fisher's probation?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Fisher's Probation

The district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to review a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines "whether the defendant violated the terms of his probation." *Id.* Second, "[i]f it is determined that the defendant has in fact violated the terms of his probation," the Court examines "what should be the consequences of that violation." *Id.* The determination of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

Here, Mr. Fisher does not challenge his admission to violating his probation. (R., p.238.) "When a probationer admits to a direct violation of her probation agreement, no further inquiry

into the question is required.” *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992). Rather, Mr. Fisher submits that the district court abused its discretion by revoking his probation.

“After a probation violation has been proven, the decision to revoke probation and pronounce sentence lies within the sound discretion of the trial court.” *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). “A judge cannot revoke probation arbitrarily,” however. *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). “The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision.” *State v. Mummert*, 98 Idaho 452, 454 (1977). “In determining whether to revoke probation a court must consider whether probation is meeting the objective of rehabilitation while also providing adequate protection for society.” *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). The court may consider the defendant’s conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

In this case, Mr. Fisher submits that the district court erred by revoking his probation because his probation was achieving its rehabilitative objective. At the disposition hearing, counsel for Mr. Fisher requested that the court continue him on probation. (Tr., p.8, Ls.19-25.) He could do a work release and maintain his employment and would engage in whatever treatment would be necessary. (Tr., p.8, Ls.19-25.) Further, counsel noted that Mr. Fisher had the support of his family and that the victim of the case was in support of continuing him on probation. (Tr., p.9, Ls.1-6.)

Mr. Fisher also addressed the court. He stated,

I would just like to say, my kids’ mom has offered to live with her and my kids – which I have never really had a good support network here. I lied to them about why I had probation violations, why I was incarcerated on the weekends doing sanctions. Never was honest about it, and, now, everything is out in the open. So they know now why I was back and forth through jail and – they’re really wanting

to help me with my addiction. And, Your Honor, that's exactly what I think I need, a good support network, people who love me and who I love in return.

(Tr., p.9, L.14 – p.10, L.2.)

Mr. Fisher had the support of his family and the victim in this case, who wished to continue him on probation. Mr. Fisher acknowledged his substance abuse addiction and knew that he could be successful with the support of his family. As his counsel noted, Mr. Fisher could maintain his employment and he was willing to attend any treatment necessary for dealing with his addiction. In light of all of these factors, Mr. Fisher submits that the district court abused its discretion by revoking his probation.

CONCLUSION

Mr. Fisher respectfully requests that the district court's order revoking his probation be vacated and his case remanded for further proceedings.

DATED this 4th day of September, 2019.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of September, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JMC/eas