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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46855-2019
Plaintiff-Respondent,)	
)	Bannock County Case No.
v.)	CR-2014-9610
)	
JESSE E. FISHER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Fisher failed to establish that the district court abused its discretion by revoking his probation?

Fisher Has Failed To Establish That The District Court Abused Its Sentencing Discretion

On July 5, 2014, Fisher “beat the crap out of” and attempted to strangle and sexually assault his live-in girlfriend, Shalise, after she “told [him] that she did not want to have sex” with him. (R., pp.29-30.) Fisher “wrestled her to the ground, head-butted her multiple times while forcibly removing her clothing, and used the electrical cord from an oscillating fan in an attempt

to strangle her, at least two times.” (R., p.29.) He also “placed his hands around her neck and attempted to manually strangle her.” (R., p.31.) Shalise “could not breathe” and she “felt that she was going to die.” (R., p.31.) She stated that Fisher “was trying to sexually assault her” during the attack, he “tore off all of her clothing and she was completely naked,” and he “tried to ‘pull her nipples off.’” (R., pp.31, 34.) When Shalise attempted to use her phone to call for help, Fisher “took the phone from her,” and, when she “tried to escape from the residence,” he “grabbed her and drug [sic] her back inside.” (R., p.31.) She eventually “made it out of the house but was forced to leave without her purse and her wallet.” (R., p.31.)

Shalise’s brother-in-law subsequently observed her injuries and reported the incident to the police. (R., p.33.) Officers contacted Shalise and noted that she had “deep purple bruising under both of her eyes,” a laceration above her right eye, abrasions to her right cheek, “purple bruising in the area of her lower thighs and upper shins,” “two red ligature marks on the right side of [her] neck,” and an area on the back of her head “where hair was pulled out.” (R., pp.29-30, 36.)

The state charged Fisher with battery with intent to commit rape and attempted strangulation, with a deadly weapon enhancement. (R., pp.78-83.) Pursuant to a plea agreement, Fisher pled guilty to attempted strangulation and the state dismissed the remaining charge and the enhancement. (R., pp.156-58.) The district court imposed a unified sentence of eight years, with three years fixed, and retained jurisdiction. (R., pp.161-67.) Following the period of retained jurisdiction, the district court suspended Fisher’s sentence and placed him on supervised probation for four years. (R., pp.177-85.)

After Fisher violated his probation, the district court reinstated him on probation. (R., pp.222-24.) Fisher subsequently violated his probation a second time, by failing to report to the

jail as ordered to serve discretionary jail time, testing positive for methamphetamine on 11 separate occasions between May and November 2018, failing to report for substance testing on seven separate occasions in November 2018, failing to attend treatment at Pacific Rim Counseling, and absconding supervision. (R., pp.227-29, 238-39.) The district court revoked Fisher's probation and executed a reduced unified sentence of eight years, with two years fixed. (R., pp.241-44.) Fisher filed a notice of appeal timely from the district court's order revoking probation. (R., pp.249-52.)

Fisher asserts that the district court abused its discretion by revoking his probation because he "could do a work release and maintain his employment," he acknowledged his substance abuse and claimed he "would engage in whatever treatment would be necessary," and he "had the support of his family and the victim of the case, who wished to continue him on probation." (Appellant's brief, pp.2-4.) Fisher has failed to establish an abuse of discretion.

"[T]he decision whether to revoke a defendant's probation for a violation is within the discretion of the district court." State v. Garner, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017) (quoting State v. Knutsen, 138 Idaho 918, 923, 71 P.3d 1065, 1070 (Ct. App. 2003)). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and is consistent with the protection of society. State v. Cornelison, 154 Idaho 793, 797, 302 P.3d 1066, 1070 (Ct. App. 2013) (citations omitted). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. Id. at 798, 302 P.3d at 1071 (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992)).

The district court's decision to revoke Fisher's probation was appropriate in light of Fisher's ongoing substance abuse and criminal behavior, his refusal to abide by the conditions of

community supervision and repeated decisions to abscond supervision, his failure to rehabilitate while in the community, and the risk he poses to society. Fisher – now [REDACTED] – has a long history of violence toward others and disregard for the law. (PSI, pp.3, 6-11.¹) He began committing crimes as a juvenile, when he was adjudicated for underage possession of a pistol/revolver and willful obstruction of law enforcement. (PSI, pp.6-7.) His criminal record consists primarily of crimes of violence, with convictions for crimes such as simple battery, battery–family violence, hit and run, and disturbing the peace (amended from battery). (PSI, pp.8-9.) In his presentence questionnaire, Fisher reported a history of two significant relationships and admitted that there were “episodes of domestic violence” in both relationships. (PSI, pp.13, 20.) He has had numerous opportunities on probation and received an “unsatisfactory discharge” from his last period of supervision only six weeks before he committed the instant offense. (PSI, pp.7-9, 11.)

Fisher previously completed treatment “for anger management and/or domestic violence,” as well as a 30-week substance abuse treatment program, but nevertheless resumed his daily consumption of alcohol, chose to begin using methamphetamine “at 29 or 30 years of age,” and continued to engage in violence toward others. (PSI, pp.8-10, 16, 20.) Despite his acknowledgement that he committed “violent acts” and “‘most’ of his crimes” “while he was under the influence of some substance,” and despite the facts that he had recently been charged with possession of methamphetamine and was consuming “‘a lot’” of alcohol, “1-2 times daily,” before he committed the instant offense, Fisher did not seek any further treatment for his substance abuse. (PSI, pp.5, 9-10, 15-16, 32, 44.) He subsequently reported that “[a]lcohol”

¹ PSI page numbers correspond with the page numbers of the electronic file “Appeal-Confidential Documents-PSI Volume 1.pdf.”

and “[m]oney” were “the reasons he committed this crime,” but “denied having any recollection of this crime” and attempted to blame the victim by claiming that she ““head butted [him]”” and he ““blacked out.”” (PSI, pp.6, 17.)

Fisher continued to commit crimes while he was on pretrial release in this case, and his bond was revoked after he was charged with domestic battery against the same victim, violation of a no contact order, and resisting or obstructing officers. (PSI, pp.10-11.) He nevertheless persisted in violating the law, amassing 15 additional charges for violation of a no contact order before he was sentenced in this case. (PSI, pp.10-11.) The district court placed Fisher in the retained jurisdiction program, where he participated in the “Conflict Resolution” rider and completed programming including SMART Psych Education/Anger Management, Moral Reconciliation Therapy, TAP 19 Relapse Prevention, and Community Group. (PSI, pp.59-61; R., pp.161-67.) The court subsequently granted Fisher the opportunity to complete a period of probation, during which Fisher continued to demonstrate his disregard for the law, court orders, and the conditions of community supervision. (R., pp.177-85, 187-88, 194-95, 227-29.)

During his first year on probation in this case, Fisher tested positive for marijuana and methamphetamine, was “unsuccessfully discharged from treatment at the District Six offices for failure to attend,” and failed to report for/actively avoided supervision for several months. (R., p.187.) Consequently, he was ordered to serve 31 days of discretionary jail time “so that he [could] complete the inpatient portion of the Bannock County SHARE program.” (R., p.187.) Just a few months after he was released from the county jail, Fisher again “had a positive UA,” was “discharged unsuccessfully from his domestic violence treatment with Redford Counseling for failure to attend,” and again failed to report for supervision. (R., p.188.) He was subsequently “given a 120 day sanction for violating his misdemeanor probation” in a separate

case and was instructed to immediately report to his probation officer in this case upon his release; however, he failed to do so and his probation officer eventually filed a progress report and requested that the court issue a bench warrant, advising that Fisher “is actively avoiding supervision” and “has demonstrated that he is unwilling to follow any directive of his court order and is not willing to be supervised in the community.” (R., p.188.) Fisher was later incarcerated for 53 days “to finish his misdemeanor probation sentence” and the bench warrant in this case was quashed. (R., p.195.) However, following his release from the county jail, he once again failed to report for supervision in this case. (R., pp.194-95.) More than a month later, his probation officer filed a report of violation alleging that Fisher had violated his probation by failing to report for supervision, being discharged from domestic violence counseling and substance abuse treatment for noncompliance, being involved in a “physical disturbance with his girlfriend” after frequenting a bar, and failing to pay his cost of supervision and other court-ordered financial obligations. (R., pp.194-95.) Fisher’s probation officer recommended that the district court revoke Fisher’s probation and execute the underlying sentence. (R., p.195.) The district court issued a bench warrant; however, Fisher was not located and arrested until approximately three months later. (R., p.196.) The court allowed Fisher to participate in the work release program while the probation violation was pending, but his work release “was revoked at the Bannock County Jail” within less than two months, and a disciplinary hearing was set. (R., pp.201, 219.)

Fisher subsequently admitted that he had violated his probation and the district court continued him on probation. (R., pp.222-24.) Fisher resumed his violating behavior within five months, and thereafter tested positive for methamphetamine on numerous occasions, repeatedly failed to report for drug testing, failed to attend treatment, failed to report to the jail to serve

discretionary jail time, changed residences without permission, and absconded supervision. (R., pp.227-28.) Fisher's probation officer filed another report of violation and again recommended that the district court revoke Fisher's probation and execute his original sentence, noting, "It appears at this time Mr. Fisher is either unwilling or unable to abide by the terms and conditions of his probation." (R., pp.227-29.) At the disposition hearing for Fisher's second probation violation, the district court stated, "I worry that probation just isn't achieving the goals that I had hoped with regard to rehabilitation and that related goal of protection of society. ... I just don't see the success coming that I had hoped for in this particular case." (Tr., p.12, L.22 – p.13, L.6.) The court revoked Fisher's probation, but showed leniency by reducing the fixed portion of his sentence to two years to "put [him] in a position where [he] can look at a parole date sooner" and "take care of some programming that might be helpful." (Tr., p.13, Ls.7-19.)

The district court's decision to revoke Fisher's probation was appropriate in light of Fisher's ongoing disregard for the law and the conditions of community supervision, his repeated decision to abscond and/or to avoid supervision, and his refusal to comply with treatment requirements in the community. Fisher's ongoing substance abuse and his unwillingness to abide by the terms of community supervision demonstrate that probation was not achieving the goals of rehabilitation or protection of the community. Given any reasonable view of the facts, Fisher has failed to establish an abuse of sentencing discretion.

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Fisher's probation.

DATED this 2nd day of October, 2019.

/s/ Kenneth Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

VICTORIA RUTLEDGE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of October, 2019, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JUSTIN M. CURTIS
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/s/ Kenneth Jorgensen
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