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ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

SALLY J. COOLEY
Deputy State Appellate Public Defender
I.S.B. #7353
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46859-2019
)	
v.)	TWIN FALLS COUNTY
)	NO. CR-2015-4443
CHRISTOPHER MICHAEL WALLISER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Christopher Walliser pled guilty to unlawful possession of a firearm. He received a unified sentence of five years, with three years fixed, and the court placed him on probation. After a probation violation, the district court reinstated Mr. Walliser's probation. After another probation violation, the district court revoked Mr. Walliser's probation but retained jurisdiction over him. After a period of retained jurisdiction, the district court placed Mr. Walliser on probation. After another probation violation, the district court revoked Mr. Walliser's probation. On appeal, Mr. Walliser contends that the district court abused its discretion in revoking his probation.

Statement of the Facts & Course of Proceedings

On April 19, 2015, Christopher Walliser was camping with his family. (Presentence Investigation Report (*hereinafter*, PSI),¹ p.4.) Present at the campsite was Mr. Walliser, his wife, and their [REDACTED] son. (PSI, p.4.) Law enforcement approached the campsite because the area the Wallisers were camping in was closed to the public. (PSI, p.4.) On the ground was a .22 rifle that belonged to Mr. Walliser's son. (PSI, p.4.) However, Mr. Walliser had more than one felony conviction. (PSI, p.4.) He was arrested for being a felon in possession of a firearm. (PSI, p.4.)

Based on these facts, Mr. Walliser was charged with unlawful possession of a firearm and the persistent violator sentencing enhancement. (R., pp.30-33.) Pursuant to a plea agreement, Mr. Walliser pled guilty to unlawful possession of a firearm and the sentencing enhancement was dismissed. (R., pp.55-66.) The district court had sentenced Mr. Walliser to a unified sentence of five years, with three years fixed, but placed him on probation for three years. (R., pp.80-88.)

Some months later, a motion to revoke probation was filed. (R., pp.102-121.) Mr. Walliser was alleged to have violated his probation by incurring new charges of driving without privileges and unlawful possession of a firearm; failing to report to his probation officer; testing positive for methamphetamine, THC, and opiates; failing to attend drug testing; and failing to attend treatment. (R., pp.102-121.) Mr. Walliser admitted to violating some of the terms and conditions of his probation and his probation was revoked, but the district court placed

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

Mr. Walliser back on probation for a period of three years “or until all court costs, fines, and restitution are paid, whichever is longer.” (R., pp.124-132.)

In 2017, a report of probation violation was filed which alleged that Mr. Walliser failed to report to his probation officer and failed to make himself available for supervision. (R., pp.142-151.) Mr. Walliser admitted to violating some of the terms and conditions of his probation and the district court revoked Mr. Walliser’s probation but retained jurisdiction for up to 365 days. (R., pp.153-157.) After a period of retained jurisdiction, the district court placed Mr. Walliser on probation for four years, or until all financial obligations are paid, whichever was longer, subject to I.C. § 20-222. (R., pp.160-170.)

In 2018, a report of probation violation was filed which alleged that Mr. Walliser failed to report to his probation officer, failed to obtain his probation officer’s permission to change residences, and failed to make himself available for supervision. (R., pp.171-183.) Mr. Walliser admitted to violating one of the terms and conditions of his probation. (12/18/18 Tr., p.7, L.18 – p.8, L.3; R., p.190.) At disposition, the State recommended imposition. (1/25/19 Tr., p.5, Ls.16-17.) Mr. Walliser’s counsel asked the district court to place Mr. Walliser back on probation or sentence Mr. Walliser to a retained jurisdiction. (1/25/19 Tr., p.6, L.25 – p.8, L.3.) The district court revoked Mr. Walliser’s probation. (1/25/19 Tr., p.11, Ls.13-14; R., pp.195-200.) Mr. Walliser filed a motion pursuant to I.C.R. requesting leniency. (R., pp.201-202.) The district court denied the motion for leniency as untimely filed. (R., pp.203-206.)

Mr. Walliser filed a Notice of Appeal timely from the Disposition Judgment Probation Violation(s). (R., pp.207-211, 215-219.) Mr. Walliser contends on appeal that the district court abused its discretion by revoking his probation.

ISSUE

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

ARGUMENT

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

Mr. Walliser asserts that the district court abused its discretion when it revoked his probation and executed his original sentence of five years, with three years fixed. He asserts that his probation violations did not justify revoking probation, especially in light of the goals of rehabilitation and the fact that the protection of society could be best served by his continued supervision under the probation department.

There are generally two questions that must be determined by the district court in addressing allegations of probation violations: first, the court must determine whether the defendant actually violated the terms and conditions of his probation; and second, if a violation of probation has been found, the trial court must then decide the appropriate remedy for the violation. *State v. Sanchez*, 149 Idaho 102, 105 (2009). "The determination of whether a probation violation has been established is separate from the decision of what consequence, if any, to impose for the violation." *Id.* (quoting *State v. Thompson*, 140 Idaho 796, 799 (2004)). Once a probation violation has been found, the district court must determine whether it is of such seriousness as to warrant revoking probation. *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). However, probation may not be revoked arbitrarily. *State v. Adams*, 115 Idaho 1053, 1055 (Ct. App. 1989). The district court must decide whether probation is achieving the goal of rehabilitation and whether probation is consistent with the protection of society. *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001). If a knowing and intentional probation violation has been

proved, a district court's decision to revoke probation will be reviewed for an abuse of discretion. I.C. § 20-222; *Leach*, 135 Idaho at 529.

In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018).

Only if the trial court determines that alternatives to imprisonment are not adequate in a particular situation to meet the state's legitimate interest in punishment, deterrence, or the protection of society, may the court imprison a probationer who has made sufficient, genuine efforts to obey the terms of the probation order. *State v. Lafferty*, 125 Idaho 378, 382 (Ct. App. 1994). Mr. Walliser asserts that the district court abused its discretion by failing to reach its decision to revoke his probation by the exercise of reason.

Here, Mr. Walliser showed good insight into his addiction issues and his criminal thinking—he knows that when difficult situations arise in his life, he is more likely to relapse and use illegal drugs. (1/25/19 Tr., p.8, L.10 – p.9, L.5.) Mr. Walliser can be rehabilitated and return to being a productive member of society. Mr. Walliser asserts that the district court abused its discretion in finding that his probation violation justified revocation in light of his rehabilitative potential and his insight into the issues that initially brought him before the district court.

One factor supporting Mr. Walliser's rehabilitative potential is the fact that he has support from his family. (1/25/19 Tr., p.7, Ls.6-18.) Mr. Walliser's family is important to him.

(1/25/19 Tr., p.7, Ls.16-18.) Mr. Walliser owns his own home and has two children and one grandchild who need him. (1/25/19 Tr., p.11, Ls.1-3.)

Mr. Walliser knows he needs help to remain sober and had even arranged for rehabilitative treatment.² (1/25/19 Tr., p.6, L.25 – p.7, L.5; p.7, Ls.19-22; p.8, L.21 – p.9, L.25.) He had been accepted into an inpatient treatment facility and was eager to attend programming. (1/25/19 Tr., p.10, Ls.3-24.) Had he been placed back on probation, Mr. Walliser also had a job lined up at All Around Tree Service, where he had been working since 2013. (1/25/19 Tr., p.7, Ls.8-11.)

Mr. Wallister told the district court:

Your Honor, Madam Prosecutor, I'm here today as humble as I can be at this point in my life. The past few years have been seemingly relentless, with blow after blow to the structured environment that I had built upon my release in 2013 from prison.

After what seemed like a lifetime of imprisonment, my father, who lived in Oklahoma, unexpectedly passed away [REDACTED], leaving my entire family stunned. This was in June of 2014. A few short months later, I found out that my wife of 11 years had sought the comfort of another man, which basically tore my family apart. Not having any coping skills or direction, I relapsed on meth, and things slowly unraveled for me. I was charged and pled guilty to my [REDACTED] son's .22 rifle, which is why I'm currently on probation.

I found myself trying to juggle a broken family, a full-time job and recently deceased father and a family in Oklahoma who I barely knew anymore due to my years in prison and a reoccurring meth addiction. I was trying to spearhead all of these things alone and without God. I failed. I violated probation and went on a rider.

During the time of my incarceration, I began speaking with my wife again and praying and praying and praying for an answer to all of the mayhem that had taken over. I decided to forgive my wife and made the plan to move home to Buhl.

Well, when I got off my rider, I abruptly found out my wife was lying about her sobriety and that I was -- and the condition of our home. The power was shut off

² Mr. Walliser applied to drug court but was denied admittance. (R., pp.192-193.)

as well as the water, and I was suddenly over \$1800 behind in bills and \$800 behind in taxes, with no vehicle. Hopes were dashed once again. I realized the past four months that I've been incarcerated this time that I had inadvertently put all of my eggs into one basket once again.

Things fell apart -- once again, things fell apart, and I made the extremely poor choice to leave the state and to try to make up for lost time with my family in Oklahoma, my widowed mother and my younger brothers and as well as their families, because I don't even know my nieces and nephews from prison. I was being very selfish and figured that even though I had zero control of my Idaho affairs, that I could at least get to know my mom and my brothers again before I turned myself in.

While I was down there, my mother reminded me that there was a way out of all the chaos, and that was through Jesus Christ and God. Almost instantly I began to pray, asking for some type of real-world, structured environment that would keep me focused on a narrow path.

After being brought back to Idaho to face punishment four months ago, I was told by another inmate about the Victory Home. I then began to ask God if this was the right place for me and if it was, to show me a sign. Not long after that, at one of the church services at the jail, a man named Charles was leading the service when it came up that I had been interested in the faith-based, structured environment of the -- that the Victory Home provided. Well, come to find out, Charles was the man that was in charge of processing applications for the Victory Home, and it's a year-and-a-half program. God opened that door and walked -- and in walked Charles. I have since filled out the application and been approved to be part of the Victory Home family.

I'm throwing myself today at the mercy of the Court and begging for the chance to attend this program rather than prison. Your Honor, I have successfully completed probation once before and was a productive, tax-paying member of society. I still own my home in Buhl and have two wonderful children and even a grandbaby that need me nearby. I've missed too much of the real-world experience by being in prison already. All I have to show for it is some screwed-up tattoos, I mean. And on December 22nd, [REDACTED], I was -- also became a born-again Christian.

Your Honor, I'm not asking for a handout today; I'm begging you for a handout.

Thank you.

(1/25/19 Tr., p.8, L.9 – p.11, L.9.)

In light of all of the mitigating evidence that was presented to the district court that demonstrates Mr. Walliser's significant rehabilitative potential, the district court abused its discretion when revoked Mr. Walliser's probation.

CONCLUSION

Mr. Walliser respectfully requests that this Court place him back on probation. Alternatively, he requests that his case be remanded to the district court for a new probation violation hearing.

DATED this 24th day of July, 2019.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

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

SJC/eas