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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 46859-2019
Plaintiff-Respondent,	)	
	)	Twin Falls Co. Case No.
v.	)	CR-2015-4443
	)	
CHRISTOPHER MICHAEL WALLISER,	)	
	)	
Defendant-Appellant.	)	RESPONDENT’S BRIEF
_____	)	

Issue

Has Walliser failed to establish that the district court abused its discretion by revoking Walliser’s probation?

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

In 2015 the state charged Walliser with unlawful possession of a firearm and alleged a persistent violator enhancement. (R., pp.30-31.) Pursuant to the parties’ agreement, Walliser pleaded guilty to the unlawful possession charge and the district court dismissed the

enhancement on the state's motion. (R., pp.55, 66, 73-76.) The district court sentenced Walliser to five years, with three years fixed, and placed Walliser on probation. (R., pp.78, 83-84.)

In 2016, the state moved to revoke Walliser's probation. (R., pp.102-04.) The state alleged he violated his probation by committing two new offenses (driving without privileges and a fresh charge of unlawful possession of a firearm); "failing to report as instructed" by his probation officer; possessing a firearm; "testing positive for methamphetamine, THC and opiates"; failing to appear for advanced detection drug testing; and failing to appear for "Lifestyle Changes" programming. (Id., pp.102-09.) Walliser admitted all of the alleged violations, except for the two involving the firearm. (Id., p.124.) The district court placed Walliser back on probation. (Id., p.128.)

In fewer than six months the state moved to revoke Walliser's probation again. (Id., pp.142-46.) This time around, the state alleged that Walliser failed to report to probation on three separate occasions, and that he failed "to make himself available for supervision." (Id., p.143.) Walliser admitted to both counts and the district court revoked probation, retaining jurisdiction. (Id., pp.155-56.) Following Walliser's rider, the district court again placed him back on probation. (Id., pp.160-64.)

In late 2017 the state moved, for the third time, to revoke Walliser's probation. (Id., pp.171-75.) The state alleged that Walliser failed to report to probation on two occasions; that he "mov[ed] without permission" or otherwise failed to "report a valid address to his probation officer; and that he failed "to make himself available for supervision" or otherwise absconded from probation. (Id., p.172.) Walliser admitted the third allegation and the state withdrew the rest. (Id., p.190.) At the disposition hearing the state recommended that the district court impose Walliser's sentence; the prosecutor noted that Walliser had a long criminal history, had failed at

many prior chances at probation, and had, this time around, “absconded to Oklahoma.” (1/25/19 Tr., p.5, Ls.16-24.) Walliser, on the other hand, “ask[ed] that the [district court] consider probation and in the alternative, a rider.” (Id., p.5, Ls.16-17; p.7, L.25 – p.8, L.3.)

The district court agreed with the state that a fourth go-round at probation was not warranted:

THE COURT: All right. Thank you, Mr. Walliser.

All right. Well, the Court has reviewed the file in this matter. I have reviewed the probation violations that were admitted to in this case. And, Mr. Walliser, I am going to revoke your probation, and I am going to impose sentence. And I’ll tell you why.

The revocation of probation—in determining whether or not I should revoke probation, I have to determine whether or not probation is achieving its goal of rehabilitation, and it is not in this case. I have to determine whether or not society is being protected by placing you on probation. And when I have a defendant who absconds completely to another state and I have no way of verifying whether or not you are following through with the terms of your probation that are meant to protect society, I have to assume that society is not being protected.

In this case, we’re here on probation violation number three, so you know the—you know the system. You know what you’re supposed to do. There’s no way that you can say that you didn’t know what you were supposed to do. You’ve already completed a rider, and yet you chose to abscond.

I understand that you had issues in other states—or family issues in another state, but there’s an appropriate process to go through for that, and I think you know that. You can interstate compact to another state if it’s appropriate and if you’re approved to do so, and you didn’t make any attempt to do so. You just simply fled the jurisdiction.

And so I don’t feel that probation is achieving its goal of rehabilitation, so I feel that in this case, I need to impose your sentence. So I do revoke your probation. I do impose your sentence. I will give you a credit for time served, and I will confirm all prior financial orders.

(Id., p.11, L.11 – p.12, L.17.) Walliser timely appealed. (R., pp.195, 207.)

Walliser asserts that the district court abused its discretion by revoking his probation and imposing his original sentence. (Appellant’s brief, p.4.) In particular, Walliser argues that he

shows “good insight into his addiction issues and his criminal thinking.” (Id., p.5.) Walliser additionally argues that he “has support from his family,” “knows he needs help to remain sober,” and “[h]ad he been placed back on probation, Mr. Walliser also had a job lined up.” (Id., pp.5-6.) Walliser contends that, “[i]n light of all 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 [it] revoked Mr. Walliser’s probation.” (Id., p.8.)

“In reviewing a probation revocation proceeding, [this Court] use[s] a two-step analysis.” State v. Sanchez, 149 Idaho 102, 105, 233 P.3d 33, 36 (2009) (citing State v. Knutsen, 138 Idaho 918, 923, 71 P.3d 1065, 1070 (Ct. App. 2003)). The first step “ask[s] whether the defendant violated the terms of his probation.” Id. If the Court determines the defendant did violate his probation, the second step asks “what should be the consequences of that violation.” Id. (citing Knutsen, 138 Idaho at 923, 71 P.3d at 1070). “A district court’s decision to revoke probation will not be overturned on appeal absent a showing that the district court abused its discretion.” Sanchez, 149 Idaho at 105, 233 P.3d at 36 (citing State v. Lafferty, 125 Idaho 378, 381, 381 P.2d 1337, 1340 (Ct. App. 1994)).

Walliser fails to show the district court abused its discretion by revoking his probation. As the court pointed out, Walliser already had three prior opportunities on probation in this case, and he failed to comply with the terms and conditions of probation all three times. (1/25/19 Tr., p.12, Ls.1-3.) This alone demonstrates that Walliser did not have “significant rehabilitative potential” (see Appellant’s brief, p.8); to the contrary, Walliser manifestly was not a suitable candidate for probation.

Moreover, Walliser’s compliance got worse over time. After being placed on probation for the third time, Walliser “failed to report for his scheduled appointment” with his probation

officer. (R., p.174.) The state alleged, and Walliser later admitted, that Walliser had absconded from probation—as his probation officer put it, “[i]t appears as if Mr. Walliser is actively avoiding supervision as he isn’t reporting to our office, he doesn’t appear to be living at his reported residence, and his current whereabouts are unknown.” (Id.)

At the disposition hearing, Walliser admitted that he had not simply failed to report, as was the case for his prior violations. (See *id.*, p.102-09, 124, 143, 155-56.) Walliser admitted that, this time around, he had fled the state of Idaho:

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.

(1/25/19 Tr., p.9, L.19 – p.10, L.2.)

Based on Walliser’s flight the district court was justifiably skeptical that he could succeed on a fourth try at probation. As the court pointed out, by this point Walliser undoubtedly knew the rules and knew “what you’re supposed to do” while on probation. (Id., p.12, Ls.1-5.) And yet, Walliser still “chose to abscond.” (Id.) The court found this weighed heavily against ordering a new round of probation: “when I have a defendant who absconds completely to another state and I have no way of verifying whether or not you are following through with the terms of your probation that are meant to protect society, I have to assume that society is not being protected.” (Id., p.11, Ls.11-25.)

Walliser’s lengthy criminal history also weighed against another chance at probation. Walliser had seven juvenile convictions for crimes including burglary, robbery, malicious injury to property, and obscene conduct. (Conf. Ex., pp.5-6.) As an adult Walliser had convictions out

of Oklahoma for felony 2nd degree burglary, possession of a dangerous substance (pseudoephedrine) with intent to manufacture, and larceny. (Id., pp.7-9.) In Idaho, in addition to the instant case, Walliser had convictions for possession of a controlled substance, misdemeanor injury to a child, providing false information to an officer, and felony possession of a controlled substance, among other things. (Id.)

Moreover, there is no indication that Walliser's repeated stints in prison had any rehabilitative effect on him. IDOC records show, among other things, that Walliser once placed a "sharpened piece of metal" in his locker "in a manner to injure an officer who slid their hand across" it to effect a search. (Id., p.10.) Another time Walliser "stalk[ed] another inmate for a period of time before" approaching him, "[striking] him in the face with his forearm, and then knock[ing] the other inmate to the floor," "punching and kicking him." (Id., pp.10-11.) Most recently, Walliser admitted to prison staff "to being an active member of the Aryan Knights," and had to be "talked to by security staff about actively displaying his gang affiliation" in the form of "multiple swastika tattoos on his torso." (Id., p.80.) The district court therefore correctly determined that it would "have to assume that society is not being protected," should Walliser be released on probation for the fourth time. (1/25/19 Tr., p.11, Ls.21-25.)

Walliser had opportunity after opportunity to succeed on probation. But each and every time he squandered those opportunities by failing to comply with the terms and conditions of probation. After many failed attempts, the district court was not required to keep placing Walliser on probation. Instead, because probation was self-evidently not "achieving its goal of rehabilitation," the district court sensibly imposed Walliser's sentence and revoked his probation. (Id., p.12, Ls.13-17.) Walliser fails to show this was an abuse of discretion.

Conclusion

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

DATED this 26th day of August, 2019.

/s/ Kale D. Gans \_\_\_\_\_  
KALE D. GANS  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of August, 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:

SALLY J. COOLEY  
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/s/ Kale D. Gans \_\_\_\_\_  
KALE D. GANS  
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