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IN THE SUPREME COURT OF THE STATE OF IDAHO

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|---------------------------|---|---------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 46907-2019 |
| Plaintiff-Respondent, |) | |
| |) | Ada County Case No. |
| v. |) | CR-MD-2012-13527 |
| |) | |
| JOETTE PLENTYWOUNDS-YUPE, |) | |
| |) | RESPONDENT’S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

Has Joette Plentywounds-Yupe failed to show that the district court abused its discretion when it revoked her probation?

ARGUMENT

Plentywounds-Yupe Has Failed Show That The District Court Abused Its Discretion

A. Introduction

A witness observed Plentywounds-Yupe drive across double yellow lines and into oncoming lanes on a divided highway, leave the roadway, and “spin[] a cookie.” (PSI, pp.35-37.) The witness contacted law enforcement to report that Plentywounds-Yupe was possibly driving while intoxicated. (PSI, p.3.) Officers stopped Plentywounds-Yupe. (PSI, p.3.) During the traffic

stop, Plentywounds-Yupe told officers, “I’m drunk.” (PSI, p.32.) She repeatedly called the officers “bitch” and “white bitch” throughout the course of the traffic stop. (PSI, p.32.) Plentywounds-Yupe refused to perform the standardized field sobriety tests. (R., pp.3, 32.) She also refused to provide a breath sample. (R., pp.3, 32.) Officers discovered more than forty alcoholic beverages in Plentywounds-Yupe’s car—some of the bottles and cans were open and empty. (PSI, p.32.) A blood draw revealed that Plentywounds-Yupe had an excessive blood alcohol concentration of .227. (PSI, p.3, 57.)

The State charged Plentywounds-Yupe with operating a motor vehicle while under the influence of alcohol, felony, Idaho Code §§ 18-8004, 18-8005(6). (R., pp.52-53.¹) Pursuant to a plea agreement, Plentywounds-Yupe pled guilty to felony DUI. (R., pp.60-67.) The district court imposed a unified ten-year sentence, with two years fixed. (R., pp.72-77.) The court suspended her sentence and placed her on probation for ten years. (R., pp.72-77.)

In September 2014, less than one year after being placed on probation, the state filed a motion for probation violation, alleging seven probation violations. (R., pp.81-83.) Plentywounds-Yupe admitted that she had violated the terms and conditions of her probation by: (1) twice consuming an alcoholic beverage, (2) failing to notify her supervising officer of contact with law enforcement, and (3) operating a motor vehicle in violation of the court’s order. (R., pp.82-83, 113.) The district court revoked Plentywounds-Yupe’s probation, executed the judgment, and retained jurisdiction. (R., pp.113-17.) The court recommended a Therapeutic Community Rider. (R., p.116.)

¹ In 2008, Plentywounds-Yupe received a withheld judgment for her first DUI. (PSI, pp.4-5.) Her second DUI stemmed from an arrest that occurred just four days after her arrest in this case. (PSI, p.5.) That DUI arrest resulted in a judgment of conviction that was entered in August 2013. (PSI, p.5.)

Following the period of retained jurisdiction, the court placed Plentywounds-Yupe back on probation for ten years. (R., pp.119-24.) In April 2016, approximately one year after being placed back on probation, the state filed a motion for probation violation alleging seventeen probation violations. (R., pp.125-28.) Plentywounds-Yupe admitted that she had violated the terms of her probation by: (1) committing the crime of petit theft, (2) twice committing the crime of intoxicated person, (3) committing the crime of possession of a controlled substance, (4) committing the crime of possession of drug paraphernalia, (5) purchasing a motor vehicle without permission; (6) driving without a valid driver's license or an interlock device, (7) failing to attend or successfully complete the rider aftercare program, and (8) leaving her assigned district without first obtaining permission from her supervising officer. (Tr., p.4, L.11 – p.7, L.8.) The court revoked Plentywounds-Yupe's probation. (R., pp.182-84; Tr., p.12, Ls.24-25.) Plentywounds-Yupe timely appealed from the order revoking probation. (R., pp.185-87.)

B. Standard Of Review

In reviewing the district court's decision to revoke probation, this Court employs "a two-step analysis." State v. Sanchez, 149 Idaho 102, 105, 233 P.3d 33, 36 (2009) (citation omitted). First, the appellate court determines "whether the defendant violated the terms of his probation." Id. If the appellate court determines "that the defendant has in fact violated the terms of his probation, the second question is what should be the consequences of that violation." Id.

The decision to revoke probation is within the sound discretion of the court. State v. Le Veque, 164 Idaho 110, 113, 426 P.3d 461, 464 (2018). "A district court's decision to revoke probation will not be overturned on appeal absent an abuse of discretion." Sanchez, 149 Idaho at 105, 233 P.3d at 36. When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) perceived

the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. State v. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

C. Plentywounds-Yupe Has Shown No Abuse Of The District Court's Discretion

On appeal, Plentywounds-Yupe does not challenge the determination that she violated the terms of her probation, nor could she given that she admitted the violations to the district court. (Tr., p.4, L.11 – p.7, L.8; R., p.179.) Instead, she asserts the district court “abused its discretion by failing to reach its decision to revoke her probation by the exercise of reason.” (Appellant’s brief, p.5.) Plentywounds-Yupe’s argument lacks merit.

The district court did not abuse its discretion when it revoked Plentywounds-Yupe’s probation. In reviewing the propriety of a probation revocation, the focus of the inquiry is the conduct underlying the trial court's decision to revoke probation. State v. Morgan, 153 Idaho 618, 621, 288 P.3d 835, 838 (Ct. App. 2012). Plentywound’s-Yupe’s admitted to seven separate violations of the terms and conditions of her second probation. (Tr., p.4, L.11 – p.7, L.8.) Her probation violations were not insignificant, technical violations. She committed a variety of new crimes including possession of a controlled substance, possession of drug paraphernalia, petit theft, and intoxicated person. (Tr., p.5, L.8 – p.6, L.17.) She also failed to successfully complete the rider aftercare treatment, and left her assigned district without her probation officer’s permission. (Tr., p.6, Ls.23-25.) All of these violations occurred within approximately one year of the court placing Plentywounds-Yupe back on probation following her rider. (R., pp.125-29.) Even Plentywounds-Yupe’s trial counsel conceded that “the Court certainly would be within its rights if it wanted to impose sentence given . . . the number, and nature of the violations.” (Tr., p.9, L.25

– p.10, L.4.) By her own admission, revocation was wholly appropriate given her conduct on probation.

Additionally, revocation is supported by Plentywounds-Yupe’s history of noncompliance with the terms of her probation. The court placed her on probation twice. And, she violated the terms of her probation twice. Upon conviction, she initially received the benefit of a ten-year probation. (R., pp.72-77; Tr., p.12, Ls.1-2.) She quickly violated the terms of that probation by resuming her consumption of alcohol, operating a motor vehicle in violation of the court’s order, and failing to notify her supervising officer of contact with law enforcement. (Tr., p.12, Ls.12-15; R., pp.82-83, 113.) The court was willing to give Plentywounds-Yupe the opportunity to “see if things could be turned around.” (Tr., p.12, Ls.15-16). The court revoked her probation but retained jurisdiction for up to 365 days. (R., pp.113-17.) Following her rider, the court *again* placed Plentywounds-Yupe on a ten-year probation. (R., pp.119-24; Tr., p.12, Ls.16-18.) Yet again she was quick to violate the terms of her probation, just as she had done before. She failed to complete her rider aftercare program, choosing instead to consume alcohol, possess drugs and drug paraphernalia, and drive without a license or an ignition interlock device. (Tr., p.5, L.16 – p.6, L.25; see R., pp.125-28.) Despite several opportunities to prove herself successful on probation, Plentywounds-Yupe’s conduct has consistently demonstrated her unwillingness comply with the terms and conditions of her probation. This pattern of behavior is inconsistent with that of a successful probationer, and supports the district court’s decision to revoke her probation. Thus, because of her conduct, the district court did not abuse its discretion when it revoked her probation.

On appeal, Plentywounds-Yupe argues “her probation violations did not justify revoking probation” in light of her abusive marriage, her familial support, and her need for additional treatment. (Appellant’s brief, pp.5-6.) She is incorrect.

The district court properly considered mitigating factors—such as Plentywounds-Yupe’s abusive marriage and her familial support—and yet still properly revoked her probation. The trial court was aware of the mitigating factors Plentywounds-Yupe relies on in her appeal. During the disposition hearing, her trial counsel alerted the court to the fact that the PSI suggested she was associating with her ex-husband and discussed the abuse she had suffered at his hand. (Tr., p.9, Ls.13-17.) The PSI also contained significant family information comments for the court’s consideration. (PSI, p.170.) Notwithstanding these mitigating factors, the district court rejected Plentywounds-Yupe’s request for a second period of retained jurisdiction. The mere fact that Plentywounds-Yupe has familial support and was the victim of an abusive marriage does not show an abuse of the court’s discretion, especially in light of the nature of her probation violations and her long history of non-compliance with the terms of her probation.

Finally, Plentywounds-Yupe’s assertion that she “should have been sentenced to a retained jurisdiction” because she had “demonstrated that she would apply herself to treatment and programing” is belied by the record. (Appellant’s brief, p.6.) In determining whether to revoke probation a court must consider whether probation is achieving “the objective of rehabilitation while also providing adequate protection for society.” State v. Upton, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995). If the court reasonably concludes from the defendant’s conduct that probation is not achieving its rehabilitative purpose, then probation may be revoked. State v. Mummert, 98 Idaho 452, 454-55, 566 P.2d 1110, 1112-13 (1977). The record supports the

conclusion that probation was neither achieving the objective of rehabilitation nor providing adequate protection for society.

Despite an obvious need for treatment, Plentywounds-Yupe failed to successfully avail herself of several rehabilitative opportunities that were afforded to her. She quickly violated her first probation by consuming alcohol, twice. (R., pp.82-83, 113-17.) Consequently, she was placed on a rider and then back on probation. (R., pp.113-17.) Nevertheless, on her second probation she failed to successfully complete her rider aftercare program. (Tr., p.6, Ls.23-25.) She committed the new crime of intoxicated person, twice. (Tr., p.5, Ls.16-25.) She also possessed a controlled substance and drug paraphernalia. (Tr., p.6, Ls.4-17.) She also purchased a car and drove it without a license or an equipped interlock device, thereby putting the public at risk. (Tr., p.6, Ls.18-22.) This conduct supports the conclusion that probation was not achieving the goal of rehabilitation and was inconsistent with the protection of society. Because Plentywounds-Yupe's probation was not achieving the goal of rehabilitation and was inconsistent with the protection of society, the revocation of her probation was not an abuse of discretion. She has failed to establish otherwise.

CONCLUSION

The state respectfully requests this Court to affirm the order of the district court.

DATED this 18th day of December, 2019.

/s/ Justin R. Porter
JUSTIN R. PORTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of December, 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:

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