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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                     |
|-----------------------|---|---------------------|
| STATE OF IDAHO,       | ) |                     |
|                       | ) | NO. 47023-2019      |
| Plaintiff-Respondent, | ) |                     |
|                       | ) | Ada County Case No. |
| v.                    | ) | CR-FE-2014-13520    |
|                       | ) |                     |
| DENNIS MICHAEL TWOHY, | ) |                     |
|                       | ) | RESPONDENT'S BRIEF  |
| Defendant-Appellant.  | ) |                     |
| _____                 | ) |                     |

ISSUE

Has Twohy failed to establish that the district court abused its discretion by revoking his probation and executing his underlying unified sentence of seven years, with two years fixed, imposed following his guilty plea to possession of methamphetamine?

ARGUMENT

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

A. Introduction

In 2014, the state charged Twohy with possession of methamphetamine, possession of marijuana, and possession of drug paraphernalia. (R., pp. 56-57.) Pursuant to a plea agreement,

Twohy pled guilty to possession of methamphetamine and the state dismissed the remaining charges and agreed to not file a sentencing enhancement. (R., pp. 56-57, 60.) At sentencing, the district court withheld judgment and placed Twohy on supervised probation for seven years. (R., pp. 75-80, 84-89.) Twohy was released on probation on March 13, 2015. (R., p. 102.)

Approximately three months later, Twohy's probation officer filed a report of violation alleging that Twohy had violated multiple conditions of his probation and he was "actively avoiding supervision." (R., pp. 119-22.) Twohy subsequently admitted that he violated the conditions of his probation by failing to serve discretionary jail time as instructed, using methamphetamine and "spice," and failing to pay restitution as ordered. (R., pp. 117, 127.) The district court revoked Twohy's probation and the withheld judgment, imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp. 129-32.) Following the period of retained jurisdiction, on February 8, 2016, the district court suspended Twohy's sentence and placed him on supervised probation for seven years. (R., pp. 135-39.)

Less than six months later, Twohy violated the conditions of his probation a second time by committing the new crimes of felony possession of a controlled substance and two separate petit thefts, purchasing methamphetamine, using methamphetamine on multiple occasions, and failing to pay restitution as ordered. (R., pp. 140-43, 155.) The district court continued Twohy on supervised probation with the additional conditions that he successfully complete the Canyon County Drug Court program and serve 90 days in the county jail, with credit for 32 days of time served. (R., pp. 157-60.)

Twohy entered the Canyon County Drug Court program on December 20, 2016. (R., p. 166.) On February 7, 2016, he was terminated from the program "for failure to comply with the rules and requirements of the program." (R., p. 166.) Thereafter, the state filed a motion for

probation violation, and Twohy later admitted that he had violated the conditions of his probation a third time by failing successfully complete the Canyon County Drug Court program, failing to report and lying about his whereabouts, failing to submit to urinalysis testing on two separate occasions, and using methamphetamine. (R., pp. 162-64, 178.) On February 5, 2018, the district court again reinstated Twohy on supervised probation. (R., pp. 181-85.)

Approximately seven months later, in September 2018, Twohy absconded supervision. (R., pp. 190-91.) The state subsequently filed a motion for probation violation and the district court issued a warrant for Twohy's arrest. (R., pp. 14, 186-88, 213.) Twohy was arrested on the warrant in March 2019. (R., p. 14.) Thereafter, he admitted that he had violated the conditions of his probation a fourth time, by changing residences without permission, using methamphetamine and marijuana, and absconding supervision. (R., p. 220.) The district court finally revoked Twohy's probation and executed his underlying sentence. (R., pp. 226-228.) Twohy filed a notice of appeal timely only from the district court's order revoking probation and executing his underlying sentence. (R., pp. 229-31.)

Twohy asserts that the district court abused its discretion by revoking his probation because he "wanted treatment" and he "acknowledged that he had made multiple mistakes while on probation but noted that he had made progress following his rider." (Appellant's brief, pp. 2-4.) Twohy has failed to establish an abuse of discretion.

#### B. Standard Of Review

“[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)).

C. Twohy Has Shown No Abuse Of The District Court's Discretion

Application of these legal standards to the facts of this case shows no abuse of discretion. At the disposition hearing, the district court stated, "You've been given multiple chances to pull it around, get it together, and successfully complete a probation. You decided you'd flake out and abscond again. ... And so you've had four PVs and you've absconded three times." (5/6/19 Tr., p. 7, L. 24 – p. 8, L. 4.) The court found that, although Twohy has been afforded "multiple opportunities at probation" and he "know[s] what the rules are," he "just decided not to follow them, and so [he's] taken probation off the board." (5/6/19 Tr., p. 7, Ls. 21-23.) Accordingly, the court revoked Twohy's probation, advising, "[Y]ou need to get your mind around the fact that if you don't follow through, the consequences are worse." (5/6/19 Tr., p. 8, Ls. 5-8.)

The district court's decision is supported by the record. Twohy was afforded numerous opportunities on probation in this case, but he continually chose to disregard the conditions of community supervision, and he failed to demonstrate adequate rehabilitative progress despite the extensive treatment that was provided to him. Before he was first released on probation in this case, Twohy completed Active Behavioral Change/Moral Reconciliation Therapy and the Substance Abuse Program in the Ada County Jail. (R., pp. 97-98.) He nevertheless resumed his use of illegal drugs shortly after his release into the community, and he thereafter "actively avoid[ed] supervision." (R., pp. 120-21.) The district court placed Twohy in the retained jurisdiction

program following his first probation violation, where Twohy completed the Matrix/Community Group, Workforce Readiness, Partners in Parenting, and Pre-Release. (PSI, pp. 65-66.<sup>1</sup>) However, Twohy subsequently performed just as poorly during his second stint on probation in this case, as he again immediately resumed his use of methamphetamine, after which he committed multiple new crimes – including a new felony possession of a controlled substance. (R., pp. 141-42.) The district court then placed Twohy in the Drug Court program, but Twohy chose to also disregard the rules of Drug Court, and was consequently terminated from the program within less than two months. (R., p. 166.) He subsequently participated in another rider program, during which he completed Cognitive-Behavioral Interventions for Substance Abuse, Thinking for a Change, and Pre-Release. (PSI, pp. 78-80.) The district court thereafter granted Twohy a *fourth* opportunity on probation in this case and, although he completed his aftercare class, Twohy nonetheless chose, yet again, to resume his use of marijuana and methamphetamine, and he absconded supervision. (R. p. 192.) Twohy’s probation officer recommended that the district court revoke probation and execute Twohy’s underlying sentence, advising that “this is Mr. Twohy’s fourth probation violation and the third time he has absconded from supervision on probation.” (R., pp. 192-93.) Twohy’s ongoing substance abuse and his unwillingness to comply with the terms of community supervision demonstrate that probation was not achieving the goals of rehabilitation or protection of the community. The district court did not abuse its decision when it determined that Twohy was no longer a viable candidate for probation.

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “Twohy 47023 psi.pdf.”

On appeal, Twohy argues that the district court abused its discretion by revoking his probation because he wanted to participate in additional treatment and he was applying for rehabilitative programs. (Appellant’s brief, p. 4.) As set forth above, Twohy has already been provided extensive rehabilitative programming in this case, and he nevertheless continued to use illegal drugs and to violate the terms of community supervision. Furthermore, Twohy had ample time to engage in additional community-based treatment while he was on probation, but he failed to do so and instead chose to abscond supervision. (R., pp. 191-92.) That Twohy wishes to participate in additional treatment now that he is facing a prison sentence does not show that the district court abused its discretion.

Twohy is not an appropriate candidate for probation. His continued substance abuse and refusal to abide by the terms of community supervision demonstrate his failure to rehabilitate and his continued danger to society. Twohy has failed to establish that the district court abused its discretion by revoking his probation.

CONCLUSION

The state respectfully requests this Court to affirm the district court’s order revoking probation and executing Twohy’s underlying sentence.

DATED this 13th day of March, 2020.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of March, 2020, 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  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
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/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General