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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47169-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-16-39814
)	
JOHNNY PAUL TAYLOR,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Taylor 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

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

A. Introduction

Taylor pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp. 33-34,

39, 68-70.) Following the period of retained jurisdiction, the district court suspended Taylor's sentence and placed him on supervised probation for seven years. (R., pp. 73-78.)

Approximately three months later, in July 2018, Taylor was discharged from Rider Aftercare for failure to attend, and he subsequently absconded supervision. (R., pp. 82, 84.) The state filed a motion for probation violation and the district court issued a warrant for Taylor's arrest. (R., pp. 7, 79-81, 111.) Taylor was arrested on the warrant on May 16, 2019. (R., p. 7.) After Taylor admitted that he violated his probation by failing to participate in Rider Aftercare and by absconding supervision, the district court revoked his probation and executed the underlying sentence. (R., pp. 80, 116, 118-20.) Taylor filed a notice of appeal timely from the district court's order revoking probation. (R., pp. 121-23.)

Taylor asserts the district court abused its discretion by revoking his probation and executing his underlying sentence. (Appellant's brief, p. 3.) Taylor 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. Taylor Has Shown No Abuse Of The District Court's Discretion

At the disposition hearing, the district court found that, although Taylor was given a rider to provide him with skills so that he could be successful on probation in this case, he thereafter failed to “use the tools” while he was on probation. (Tr., p. 13, L. 19 – p. 14, L. 14.) The court noted that Taylor failed to attend aftercare treatment as required, he “left the Rescue Mission after getting banned,” he “e-mailed [his] probation officer that [he] was leaving the state,” and he failed to report for supervision “for multiple months.” (Tr., p. 13, L. 25 – p. 14, L. 4.) The court advised that, “right now the drug courts are full. And ... depending on how much work people are willing to do, we have a tiny bit of flexibility ... but if people are absconding and taking off and not participating in treatment anyway, it isn't a particularly good risk and isn't a very good situation for giving a very valuable spot.” (Tr., p. 14, Ls. 15-23.) Accordingly, the district court revoked Taylor's probation and executed his underlying sentence. (Tr., p. 14, Ls. 24-25.)

Taylor's decisions to not attend treatment as required and to abscond supervision support the district court's determination that Taylor was no longer a suitable candidate for probation. The goal of probation is to foster the probationer's rehabilitation while protecting public safety. State v. Cheatham, 159 Idaho 856, ___, 367 P.3d 251, 253 (Ct. App. 2016) (citations omitted). In no way can probation achieve the goals of protecting the community and rehabilitation if the probationer refuses to attend treatment and chooses to remove himself from probation supervision. See State v. Sandoval, 92 Idaho 853, 860, 452 P.2d 350, 357 (1969) (citing State v. Oyler, 92 Idaho 43, 436 P.2d 706 (1968)) (purpose of probation is to give the offender “an opportunity to be rehabilitated *under proper control and supervision*” (emphasis added)).

On appeal, Taylor argues that the district court abused its discretion when it revoked his probation because he accepted responsibility, he was injured in a bicycle accident shortly after he

was placed on probation, and he chose to leave the state to see his sons and his ailing mother. (Appellant's brief, pp. 5-6.) Taylor has previously claimed to have accepted responsibility for his criminal behavior (PSI, p. 4¹); however, his purported remorse has not motivated him to comply with his legal obligations. There is no evidence that Taylor's bicycle accident or his injury therefrom had any effect on his ability to comply with the terms of probation, as he reported that he "flushed" his Vicodin prescription, he did not claim to have had a relapse thereafter and did not have a positive drug test, and he was subsequently able to work doing manual labor. (PSI, pp. 124-25, 127-28.) At the disposition hearing, Taylor acknowledged that he "did not follow the correct steps necessary to leave the state and go to Oregon," and that he was aware he "should have requested a travel permit" (Tr., p. 12, L. 24 – p. 13, L. 3); he simply chose not to follow the rules. Furthermore, after Taylor absconded, his probation officer ran a search of Taylor's social media accounts and discovered that Taylor posted, on Facebook, that he had obtained employment at a cleaning company near Portland, Oregon – which is not consistent with Taylor's claim that he went to Oregon merely to visit his sons and his mother. (PSI, p.145.) Taylor's claims do not show that the district court abused its discretion by revoking probation.

The record does not indicate that Taylor was an appropriate candidate for probation. The district court's decision to revoke Taylor's probation and execute his underlying sentence was reasonable, particularly in light of Taylor's failure to participate in community-based treatment and his decision to abscond and completely disregard the terms of supervision. Taylor has failed to establish that the district court abused its discretion by revoking his probation.

¹ PSI page numbers correspond with the page numbers of the electronic file "Taylor 47169 psi.pdf."

CONCLUSION

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

DATED this 4th day of December, 2019.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th 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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