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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                     |
|-----------------------|---|---------------------|
| STATE OF IDAHO,       | ) |                     |
|                       | ) | NO. 47237-2019      |
| Plaintiff-Respondent, | ) |                     |
|                       | ) | Ada County Case No. |
| v.                    | ) | CR-MD-2015-3395     |
|                       | ) |                     |
| JASON DAVID ALLRED,   | ) |                     |
|                       | ) | RESPONDENT'S BRIEF  |
| Defendant-Appellant.  | ) |                     |
| _____                 | ) |                     |

ISSUE

Has Allred failed to establish that the district court abused its discretion by revoking his probation?

ARGUMENT

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

A. Introduction

In March 2015, Allred “came home from a bar and got into a verbal argument with his live-in girlfriend, Erin,” during which he “grabbed” Erin and shoved her “to the ground on her

back,” causing her head to “hit the bookcase.” (PSI, pp. 3, 49, 59.<sup>1</sup>) Allred “kicked and stepped on Erin as she was on the ground” and “pulled her hair.” (PSI, pp. 3, 59-60.) Erin’s [REDACTED] daughter and [REDACTED] son were present and, while Allred was “kicking at Erin,” she “could see her daughter right behind [Allred], crying, and she could see her son standing at his bedroom door, yelling and crying.” (PSI, pp. 3, 60.) Allred subsequently “grabbed [Erin’s] wallet” and took her credit card, telling her that “she could not pay the bills if she did not have the card.” (PSI, p. 49.) Erin “tried to reach around his body to grab [the card]”; however, Allred “kept shoving her on the floor and stepping on her,” and he “‘threw her around’ in the room.” (PSI, p. 49.) When Erin’s daughter observed Allred “throwing her mother,” she “ran in and started trying to get him off of her.” (PSI, p. 50.) Allred then went into the kitchen and used “a butcher knife to cut up [Erin’s] card.” (PSI, p. 49.) Erin “tried to stop him,” but he “purposely sliced at her” and “cut her thumb open,” then “shoved her to the ground again,” kicked her, and “stood on her stomach with one foot.” (PSI, pp. 49-50, 60.) Allred eventually “left the kitchen,” and Erin’s son “helped his mom stop the bleeding” from her thumb and “called 911.” (PSI, p. 50.)

Officers responded and noted that Erin had an “abrasion on her back,” that “[i]t was hard for her to move,” and that she appeared to be “in a lot of pain.” (PSI, p. 51.) Erin subsequently went to the hospital, where she was treated for the laceration on her thumb, a “small bump” and swelling “on her right temporal scalp,” “multiple abrasions,” a “large bruise” on her lower back and lower back pain, and “multiple” other contusions. (PSI, pp. 49, 63-70.)

The state charged Allred with felony domestic violence in the presence of children. (R., pp. 84-85.) Pursuant to a plea agreement, Allred pled guilty to an amended charge of aggravated

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “Allred 47237 psi.pdf.”

assault and the state agreed to recommend probation unless the domestic violence evaluation indicated Allred was “high risk and not appropriate for comm[unity] treatment.” (R., p. 99.) The domestic violence evaluator determined that Allred was “in the high range for risk of future violence” and recommended treatment with “[i]ntensive monitoring.” (PSI, pp. 125, 127.) The district court imposed a unified sentence of five years, with one year fixed, suspended the sentence, and placed Allred on supervised probation for five years. (R., pp. 125-33.)

Allred was released on probation in August 2016, and he committed the new crime of petit theft the same month. (R., pp. 127, 160-61, 168.) The state subsequently filed a motion for probation violation alleging that Allred had violated the conditions of his probation by committing the new crime of petit theft, failing to pay restitution, and failing to pay his other court-ordered financial obligations. (R., pp. 160-61.) A few months later, the state filed an amended motion for probation violation, alleging that Allred had also violated the conditions of his probation by failing to attend and/or complete domestic batterer’s treatment, changing residences without permission, leaving his assigned district without permission, absconding supervision, and failing to pay the costs of supervision. (R., pp. 165-67.) Allred admitted that he violated his probation by committing the new crime of petit theft, failing to complete domestic batterer’s treatment, and absconding supervision, and the state dismissed the remaining allegations. (R., p. 184; 6/17/19 Tr., p. 5, Ls. 8-11.) The district court revoked Allred’s probation, executed the underlying sentence, and retained jurisdiction. (R., pp. 187-90.) Allred filed a notice of appeal timely from the district court’s order revoking probation. (R., pp. 191-93.)

Allred asserts that the district court abused its discretion “by failing to properly consider evidence of [his] mental health when revoking his probation” and by denying both “his request

to again be screened for Mental Health Court,” and his alternative request to “be released on probation and given assistance to apply for a transfer of supervision to Utah.” (Appellant’s brief, pp. 4, 8-9.) Allred has failed to establish an abuse of discretion.

B. Standard Of Review

“Once a probation violation has been proven, the decision of whether 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). 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. Allred 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. First, the district court applied the correct legal standards. (7/22/19 Tr., p. 18, Ls. 14-21.) It considered Allred’s mental health issues, stating, “[T]here’s no doubt it appears that the defendant struggles with controlling his mental illness, which primarily struggles in maintaining his medication.” (7/22/19 Tr., p. 18, L. 25 – p. 19, L. 3.) The court found that Allred “needs to learn how to maintain his medication and what he needs to do to do that ... because when he doesn’t, he can be dangerous,” and “[h]e does not make himself available for supervision, he did not complete the classes that were required in order for the Court to feel that he presented an acceptable risk to the community.” (7/22/19 Tr., p. 19, Ls. 16-25.) The court stated, “I do not

believe he's a good candidate for mental health court because his underlying offense was effectively a domestic violence crime." (7/22/19 Tr., p. 19, Ls. 3-6.) It explained that "those whose crimes are primarily domestic violences [sic]" are "generally" not accepted into the mental health court program because many program participants are "folks who have suffered at the hands of domestic violence[,] and [the participants] all work together in groups," which "can re-inflict that trauma" on those who have been victims of domestic violence. (7/22/19 Tr., p. 19, Ls. 6-14.) The court concluded, "I think the training and treatment that he can receive on the Rider is what I can best do, given that he's not a good candidate for mental health court." (7/22/19 Tr., p. 20, Ls. 13-16.) Accordingly, the district court revoked Allred's probation, executed his underlying sentence, and retained jurisdiction. (7/22/19 Tr., p. 20, Ls. 4-5.)

The district court's decision is supported by the record. Allred's continued criminal offending and unwillingness to abide by the terms of community supervision, his high risk for future violence, and his failure to comply with treatment requirements while in the community demonstrate that probation was not achieving the goals of rehabilitation or protection of the community. Allred has a long history of criminal offending that dates back to 1992, when he was adjudicated for "fraudulent check cashing." (PSI, p. 5.) He has been convicted of multiple violent and/or dangerous crimes, including assault-domestic violence, battery, disturbing the peace (amended from fighting), reckless driving (amended from DUI), and the instant aggravated assault offense. (PSI, pp. 4-5, 152.) His record also includes several prior probation violations. (PSI, p. 4.) The domestic violence evaluator determined that Allred is "in the high range for risk of future violence" and that his risk of having "another domestic violence incident that involves law enforcement" within the next five years is "74%." (PSI, pp. 125-26.) While Allred was on probation in this case, he failed to complete domestic violence treatment as required, he was

“reportedly using drugs,” he committed his third petit theft offense, and he absconded and moved to Utah without permission. (PSI, pp. 4, 152-53; R., p. 168-70.) Consequently, his whereabouts were unknown and he was unsupervised for approximately nine months. (R., pp. 168-69; PSI, p. 153.) An offender’s decision to abscond, no matter the reason, prevents authorities from ensuring that probation is serving its intended function. In no way can probation meet the goals of protecting the community and rehabilitation if the probationer chooses to remove himself from probation supervision. See State v. Dickson, 152 Idaho 70, 75, 266 P.3d 1175, 1180 (Ct. App. 2011) (citing State v. Wakefield, 145 Idaho 270, 273, 178 P.3d 635, 638 (Ct. App. 2007)) (“The purpose of probation is to give the defendant an opportunity to be rehabilitated *under proper control and supervision*.” (emphasis added)). The very act of absconding is a continuation of criminal behavior. Allred is not an appropriate candidate for probation in light of his ongoing disregard for the law and the terms of probation, the risk he presents to society, and his lack of demonstrable rehabilitative progress while on probation. The district court did not abuse its discretion by revoking Allred’s probation.

On appeal, Allred contends that the district court abused its discretion “by failing to properly consider evidence of [his] mental health when revoking his probation.” (Appellant’s brief, p. 4.) Contrary to Allred’s claim, the record shows that the district court considered all of the evidence in this case – including “the prior PSI materials,” the “new file review PSI,” and “the arguments of counsel” – in making its decision to revoke probation. (7/22/19 Tr., p. 18, Ls. 21-23.) The court properly considered Allred’s mental health, as evinced by the fact that, at the disposition hearing, it specifically addressed Allred’s mental health issues, his “struggles with controlling his mental illness” and with “maintaining his medication,” his need for additional “training and treatment” for his mental health issues, and his request to again be screened for

mental health court. (7/22/19 Tr., p. 18, L. 25 – p. 20, L. 16.) That the district court concluded that Allred was “not a good candidate for mental health court” and that the rider program was the “best” option (7/22/19 Tr., p. 20, Ls. 13-16) does not show that the court “fail[ed] to properly consider evidence of [his] mental health” (Appellant’s brief, p. 4) when it revoked his probation and retained jurisdiction.

Allred also argues that the district court abused its discretion by not granting his request to either “again be screened for Mental Health Court,” or “be released on probation and given assistance to apply for a transfer of supervision to Utah,” because he has mental health issues and needs treatment. (Appellant’s brief, pp. 5-9.) The district court already afforded Allred the opportunity to rehabilitate in the community when it first placed him on probation in this case, but he made no demonstrable progress in effectively managing his mental health issues or in curbing his criminal thinking and behavior. Allred has repeatedly attributed his unlawful and violating behavior to his purported inability to obtain mental health treatment and medication due to his “financial struggles” (Appellant’s brief, pp. 6-9; PSI, p. 332; 7/22/19 Tr., p. 15, L. 14 – p. 17, L. 24); however, he has been receiving mental health treatment and taking mental health medication since at least 2014, and he has previously obtained public assistance “to help him pay for the medication” (7/22/19 Tr., p. 15, Ls. 22-25; PSI, pp. 11, 120, 135, 137-50, 153; R., pp. 168-69). As such, he should have been well aware that there were “public assistance programs available to help him stay on his medication.” (7/22/19 Tr., p. 19, Ls. 16-21.) Allred nevertheless chose to stop taking his mental health medication on several occasions while he was on probation in this case, and he failed to seek or utilize resources that were available in the community to assist him in obtaining mental health treatment and medication. (7/22/19 Tr., p. 16, L. 8 – p. 17, L. 2.) He instead decided to abscond and move to Utah, without notifying his

probation officer or making any attempt to discuss his lack of medication with his probation officer, and without even *starting* the application process to transfer his supervision to Utah. (7/22/19 Tr., p. 17, Ls. 5-13; R., pp. 168-170; PSI, p. 153.) Thereafter, Allred actively avoided supervision for approximately nine months, until his probation officer finally located him and he was arrested by Utah police. (R., pp. 168-70; PSI, p. 153; 7/22/19 Tr., p. 17, Ls. 10-13.)

At the disposition hearing, Allred’s counsel informed the district court that Allred “would like to take advantage of” another screening for mental health court “*if* the Court were to allow him to be *out of custody* and be screened,” as Allred was “concerned” that being screened while he was still in the jail would “prolong how long he is in custody.” (7/22/19 Tr., p. 12, L. 23 – p. 13, L. 12 (emphasis added).) That Allred’s desire to again be screened for mental health court was contingent on his first being released from custody (7/22/19 Tr., p. 13, Ls. 8-12; p. 14, L. 23 – p. 15, L. 2) raises doubts as to his willingness to participate in the program, especially because, in his own release plan and comments to the court, Allred reported that his “plans upon release are to move down to Utah to be with [his] mother” and requested that the court “release [him] into [his] mother’s custody” (PSI, pp. 331, 333-34). Furthermore, Allred did nothing to demonstrate that he was a viable candidate to be reinstated on community supervision immediately after he had utterly disregarded the terms of probation by absconding and avoiding supervision for nine months. He likewise failed to show that his request “to move back to [his] mother’s house in Utah” – where Allred resided while was on absconder status – was an acceptable option, particularly since his mother facilitated his avoidance of supervision by failing to respond to his probation officer’s attempts to contact her to locate Allred. (PSI, pp. 153, 334; R., p. 170.) Allred’s arguments do not show that the district court abused its discretion when it



denied his request for immediate reinstatement on community supervision and instead placed him in the retained jurisdiction program.

The district court's decision to revoke Allred's probation was appropriate in light of Allred's refusal to abide by the conditions of probation, his absconding behavior, his failure to demonstrate rehabilitative progress while in the community, and his continued risk to society. Allred 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 Allred's probation.

DATED this 28th day of January, 2020.

/s/ Kenneth K. Jorgensen  
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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of January, 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:

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/s/ Kenneth K. Jorgensen  
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