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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47244-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2014-16707
)	
DANNY AUGUSTUS BREEDLOVE,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Breedlove failed to establish that the district court abused its discretion by revoking his probation and executing his underlying unified sentence of five years, with one year fixed, imposed following his guilty plea to third degree arson?

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

In October 2014, Breedlove went to Biomat to donate plasma; however, staff at Biomat noted that Breedlove appeared “to be intoxicated and [he] was turned away.” (PSI, pp. 2-3.¹)

¹ PSI page numbers correspond with the page numbers of the electronic file “Breedlove 47244 psi.pdf.”

Breedlove “was angry with being denied the ability to donate blood,” so he “set fire to a garbage can in front of the Biomat building.” (PSI, p. 3.) “[T]here were reportedly 60-70 persons inside Biomat” when Breedlove started the fire. (PSI, p. 3.)

The state charged Breedlove with third degree arson. (R., pp. 47-48.) Pursuant to a plea agreement, Breedlove pled guilty and the state agreed to recommend probation and an underlying unified sentence of six years, with two years fixed. (R., pp. 51, 59-61.) On August 24, 2015, the district court withheld judgment and placed Breedlove on supervised probation for five years. (R., pp. 75-79.)

Approximately 10 months later, the state filed a motion for probation violation alleging that Breedlove had violated the conditions of his probation by committing the new crimes of resisting/obstructing an officer and trespassing, failing to report for supervision on multiple occasions, failing to make himself available for supervision and program participation, and failing to pay restitution and the cost of supervision. (R., pp. 116-18.) Breedlove admitted that he violated the conditions of his probation by committing the new crime of trespassing and failing to report for supervision on multiple occasions, and the district court revoked the withheld judgment; imposed a unified sentence of five years, with one year fixed; suspended the sentence; and placed Breedlove on supervised probation for five years with the condition that he “participate in and fully comply with Bridge Court.” (R., pp. 148, 157-62.)

The following month, on October 19, 2016, Breedlove failed to appear for Bridge Court and the court issued a warrant for his arrest. (R., pp. 163, 172.) The state subsequently filed a second motion for probation violation, alleging that Breedlove had violated the conditions of his probation by committing the new crime of battery, failing to report for supervision on seven separate occasions, changing residences without permission, failing to report for Bridge Court as

instructed, and failing to pay restitution and the cost of supervision. (R., pp. 167-69.) Breedlove was arrested on the bench warrant on April 21, 2017, after which he admitted that he violated the conditions of his probation by committing the new crime of battery, failing to report for supervision on seven separate occasions, changing residences without permission, and failing to report for Bridge Court. (R., pp. 11, 178.) The district court revoked Breedlove's probation, executed the underlying sentence, and retained jurisdiction. (R., pp. 180-82.) Following the period of retained jurisdiction, on November 27, 2017, the district court again suspended Breedlove's sentence and placed him on supervised probation for five years. (R., pp. 186-91.)

Less than three months later, the state filed a third motion for probation violation, alleging that Breedlove had violated the conditions of his probation by committing the new crime of possession of drug paraphernalia, being discharged from Rider Aftercare treatment for failure to attend, failing to report for supervision as instructed, changing residences without permission, using marijuana in December 2017 and January 2018, failing to maintain employment, failing to make himself available for supervision, absconding supervision, and failing to pay restitution. (R., pp. 192-94.) The district court issued a bench warrant in February 2018, and Breedlove was arrested on the warrant approximately seven months later, on October 1, 2018. (R., pp. 13, 201.) The state subsequently filed an amended motion for probation violation, adding allegations that Breedlove had violated the conditions of his probation by committing the new crimes of possession of an open container of alcohol (in March 2018) and aggravated battery (in September 2018). (R., pp. 204-06.) Breedlove admitted that he violated the conditions of his probation by committing the new crimes of possession of drug paraphernalia and aggravated battery, and the district court revoked Breedlove's probation and executed the underlying

sentence. (R., pp. 215, 217-19.) Breedlove filed a notice of appeal timely from the district court's order revoking probation and executing his underlying sentence. (R., pp. 220-22.)

Breedlove asserts that the district court abused its discretion by revoking his probation, because he “showed good insight into his mental health issues,” he performed “well” on his rider in 2017, and he “needs assistance obtaining social security disability so he can qualify for full-time care to help him comply with his mental health needs.” (Appellant's brief, pp. 4-7; PSI, p. 118.) Breedlove has failed to establish an abuse of discretion.

“‘[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)).

On appeal, Breedlove argues that his “compliance” while on his rider “should have demonstrated to the court [his] ability to be successful on a strictly supervised probation.” (Appellant's brief, p. 6.) However, Breedlove was reinstated on probation after he completed his rider and, within less than six weeks, he had twice tested positive for marijuana, failed to attend Rider Aftercare treatment, committed a new crime, and absconded supervision (R., pp. 195-97), thus demonstrating his unwillingness to abide by the terms of community supervision. Furthermore, while Breedlove argues that he merely “needs assistance obtaining social security

disability so he can qualify for full-time care to help him comply with his mental health needs” (Appellant’s brief, p. 6), it should be noted that Breedlove “has been trying to get Social Security since at least 2015,” without success (PSI, p. 131).

At the disposition hearing, Breedlove’s counsel acknowledged that the probation department is “not set up to deal with the type of assistance that [Breedlove] needs to be successful in the community” (Tr., p. 16, Ls. 9-14), and stated, “I don’t know that the resources that he needs can be addressed through probation either” (Tr., p. 16, L. 23 – p. 17, L. 3). The district court subsequently articulated its reasons for revoking probation and executing Breedlove’s underlying sentence. (Tr., p. 19, L. 12 – p. 24, L. 19.) The state submits that Breedlove has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

CONCLUSION

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

DATED this 23rd 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 23rd 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:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

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

APPENDIX A

<p style="text-align: center;">16</p> <p>1 denied those benefits. And then with the benefits 2 that he has and the ability to tap into resources 3 with that application, he would be able to obtain 4 that round-the-clock care or significantly close 5 to that care that he needs to be successful. The 6 PSR workers or community-based workers, as they 7 are called now, that type of thing is the type of 8 services that Danny needs.</p> <p>9 To some extent, really, probation's 10 obligations I think would have been to -- when he 11 was in contact to try to assist him with the 12 social security application, but they are not set 13 up to deal with the type of assistance that Danny 14 needs to be successful in the community.</p> <p>15 And so, obviously, I would like the 16 Court to not send him to probation -- or, excuse 17 me -- to prison. I don't know that probation 18 serves any further needs at this point. He is 19 going to have a sentence with Judge Scott on what 20 he is going to get for the aggravated battery.</p> <p>21 Given that sentence that will be 22 coming, I would ask the Court to consider to 23 simply just terminating probation on this case. I 24 know that it's not been a successful completion, 25 but I don't see that we gain anything by sending</p>	<p style="text-align: center;">18</p> <p>1 was some falling through the cracks of things that 2 could have been done and simply didn't. And 3 unfortunately because of that we find ourselves in 4 the position where he is back and he has committed 5 the conduct there.</p> <p>6 If you look at some of his comments in 7 the PSI, from my take on them, I think he 8 acknowledges that the gentleman that was chasing 9 him out of the trailer was the one there. But in 10 the moment, given where his mental status was, and 11 the issues that he had with the folks nearby, he 12 thought that that guy was one of them. Clearly, 13 he was not. Clearly it was his trailer that Danny 14 was taking the tools from and we find ourself here 15 in the PV and the new case.</p> <p>16 I don't have a perfect answer for him. 17 I don't think the State's recommendation is the 18 way to go, but I don't -- you know, standing up 19 here and asking the Court to place him back on 20 probation I don't think is going to serve the 21 needs that he needs.</p> <p>22 So I would ask the Court to consider 23 simply terminating probation and ending Danny's 24 obligation as to this case.</p> <p>25 THE COURT: Mr. Breedlove.</p>
<p style="text-align: center;">17</p> <p>1 him to prison, and I don't know that the resources 2 that he needs can be addressed through probation 3 either.</p> <p>4 We are -- you know, the social security 5 is something that he needs to fill out the 6 disability applications. There are agencies, it 7 appears, that can help expedite some of that 8 process -- particularly for folks in Danny's 9 position -- but largely, that process all has to 10 occur when he is in the community.</p> <p>11 So whether the Court were to place him 12 on probation again and release him or send him to 13 prison and he has to deal with it on the back end 14 of that release, he has to be in the community at 15 some point. And so he is medicated now. He has 16 the ability to continue to work with our office to 17 obtain some of these services -- some of these 18 contacts.</p> <p>19 I know that on other cases our social 20 workers continue to work with individuals to help 21 them obtain things like bicycles and basic 22 clothing so that they can get around and tie them 23 into those resources.</p> <p>24 Your Honor, as I said, Danny is 25 responsible for his conduct. It seems like there</p>	<p style="text-align: center;">19</p> <p>1 THE DEFENDANT: I'm sorry. What I did that 2 night shouldn't have happened.</p> <p>3 I take action for my own 4 responsibility, and I know I got many chances at 5 probation. And if it gets reinstated, I'll make 6 sure to do everything I can to stay on top of that 7 to not re-offend.</p> <p>8 THE COURT: Is there legal cause why we 9 should not proceed?</p> <p>10 MS. DUNN: None known to the State.</p> <p>11 MR. MARX: No, Your Honor.</p> <p>12 THE COURT: Well, the original case did 13 cause me concern because the defendant got angry 14 and started a garbage can on fire at plasma center 15 because they didn't want to let the defendant to 16 sell his plasma because he was drunk at the time.</p> <p>17 He was angry, and he started that. And 18 people could have been injured because there were 19 people in that building. And buildings do go up, 20 unfortunately, way faster than people guess. But 21 I felt like it was worth a try because we had a 22 very excellent report from Dr. Beaver that talked 23 about the fact that the defendant is seriously 24 mentally ill.</p> <p>25 He has got low average IQ that doesn't</p>

<p style="text-align: center;">20</p> <p>1 help him assess some of what he needs to do, but 2 the more serious problem is that he has what they 3 refer to as an unspecified schizophrenia spectrum 4 disorder. So he clearly has mental health 5 conditions. 6 Unfortunately, there appears to be a 7 level of drug addiction. It's not entirely clear 8 on that. The defendant has been homeless a lot. 9 He has not been helped by the fact that his 10 father, who certainly cares about him, never 11 seemed to grasp how serious a mental condition the 12 defendant had and frequently took him off 13 medications that would have been more beneficial 14 to him. 15 When he was banned from the library 16 because he was watching things on the library 17 computers that are not permitted there, he got 18 angry and knocked stuff off it. And, you know, 19 again his anger led to bad UA and so that resulted 20 in the trespassing charge. 21 There were problems with him reporting 22 early on, and there were problems with his 23 behavior at the Mission. Then later there were 24 more serious problems at the Mission because he 25 punched a staff member in the face. He missed</p>	<p style="text-align: center;">22</p> <p>1 lots of good options. 2 And I think one of the problems is that 3 as a country we don't do a very good job with 4 people whose mental health conditions are such 5 that should not be allowed to choose to not take 6 medications. But we've come over time to have set 7 up some serious road blocks to mandatory 8 medications. 9 We don't have in Idaho much in the way 10 of mental health treatment, particularly it's 11 very, very difficult to deal with somebody who 12 doesn't want to try and who unfortunately has 13 major mental health problems. 14 He does better when he is on 15 medication. He does a lot better when he is on 16 medication. He is clearly responsive to 17 medication in the physical sense. But when he 18 gets out of custody, he stops taking his 19 medication. He stops showing up. He stops doing 20 what he is supposed to do. 21 So we do significantly lack tools. It 22 is very problematic for halfway houses and group 23 homes to deal with people who go off their 24 medications and respond in a violent way. And 25 that also limits the placement options because not</p>
<p style="text-align: center;">21</p> <p>1 lots of office appointments. 2 He does not -- it is not really 3 feasible, I don't think, to expect that he would 4 maintain regular employment. I think that his 5 mental health conditions are at a very critical 6 level. 7 But, unfortunately, he has a 8 particularly poor record of medication compliance. 9 He doesn't show up for treatment. He didn't do 10 aftercare treatment after his rider. He stopped 11 reporting. He failed UA tests. He got kicked out 12 of Rising Sun. He was using marijuana a lot, and 13 he appears to be dodging his probation officer. 14 He was in abscond status and was only 15 found because he started rummaging through -- I 16 think Mr. Hobart's landscape trailer. And 17 Mr. Hobart understandably was concerned that he 18 was stealing stuff from it. And when he was 19 confronted, he hit him in the head three times 20 with a pipe wrench. 21 And it is very clear from the pictures 22 that this was a pretty significant attack. 23 Mr. Hobart's clothes are covered in blood. His 24 head is bloody and battered. He had to have 25 numerous stitches. So no, I don't think we have</p>	<p style="text-align: center;">23</p> <p>1 too much places are set up to deal with it. 2 And I think one of the saddest things 3 that I have seen dealing with people who suffer 4 from major mental health conditions, major mental 5 illness over the years is the problem of major 6 mental illness condition is that when people go 7 off the medications, they don't realize that 8 there's anything wrong with them. They think 9 things are wrong with everybody else, and so it is 10 particularly sad. 11 But unfortunately in this case, counsel 12 for the defense is correct, we don't have a lot of 13 good options. But I don't see how I can continue 14 probation when a violation has led to so much harm 15 to somebody else because Mr. Breedlove won't stay 16 on his medications. And he won't report to his 17 probation officer, and he won't make himself 18 available for whatever tools the probation officer 19 has. 20 So the best option we have is for a 21 little while, the general public doesn't have to 22 deal with somebody who gets this violent when he 23 gets off his medications and not following 24 probation appropriately. That's the best that we 25 can do. And unfortunately, that's sometimes the</p>

1 best option we have is that at least for a little
2 while, people won't have to deal with this serious
3 a threat to their own personal safety.

4 Because ultimately, the purpose of the
5 criminal justice system is to make sure that the
6 public is as safe as we can manage, and that means
7 in this case that the Court is revoking probation
8 and imposing sentence because we don't have
9 feasible options.

10 I think it's unfortunate because I do
11 think when we are talking about health conditions
12 of this severe of a nature, we need more options
13 than we have. But at least we have the option
14 that for a little while people don't have to be
15 afraid that Mr. Breedlove will blow up and hurt
16 them.

17 And that's all I've got, and I don't
18 like it that that's all I've got, but that's where
19 I am. And that's where the system is.

20 And you do have 42 days in which to
21 appeal.

22 MR. MARX: Thank you, Your Honor.
23 (Proceedings concluded at 5:05 p.m.)

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25 ///

1 REPORTER'S CERTIFICATE

2
3 STATE OF IDAHO)
4 COUNTY OF ADA) SS

5
6 I, ROXANNE K. PATCHELL, Official Court
7 Reporter, Ada County, State of Idaho hereby certify:

8 That I am the reporter who took the
9 proceedings had in the above-entitled action in
10 machine shorthand and thereafter the same was
11 reduced into typewriting under my direct
12 supervision; and

13 That the foregoing reporter's transcript
14 contains a full, true, and accurate record of the
15 proceedings had in the above and foregoing cause,
16 which was heard in Boise, Idaho.

17 IN WITNESS WHEREOF, I have hereunto set
18 my hand this 11th day of December, 2019.

19
20
21 Roxanne K. Patchell, RPR, CSR
22 Roxanne K. Patchell, RPR, CSR
23 Idaho CSR Number 733
24 California CSR Number 12057
25