

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

1-8-2020

State v. Pope Appellant's Brief Dckt. 47290

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Pope Appellant's Brief Dckt. 47290" (2020). *Not Reported*. 6261.
https://digitalcommons.law.uidaho.edu/not_reported/6261

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JENNY C. SWINFORD
Deputy State Appellate Public Defender
I.S.B. #9263
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47290-2019
)	
v.)	ADA COUNTY NO. CR-FE-2011-13365
)	
DAMON POPE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Damon Pope appeals from the district court's order revoking his probation and executing his ten-year sentence. He argues the district court abused its discretion because the district court should have reinstated him on probation.

Statement of Facts and Course of Proceedings

In January 2012, Mr. Pope pled guilty to a felony DUI. (R., p.54.) In March 2012, the district court sentenced him to ten years, with two years fixed, and a period of retained jurisdiction ("a rider"). (R., pp.55, 58-60.) After the rider, in July 2012, the district court

suspended execution of Mr. Pope's sentence and placed him on probation for ten years. (R., pp.69, 70–71.)

In June 2019, the State filed an amended motion for a probation violation. (R., pp.89–91.) In July 2019, Mr. Pope admitted to violating his probation for committing a new offense of disturbing the peace and consuming alcohol. (Tr. Vol. I,¹ p.8, L.21–p.10, L.24.) Later that day after his admissions, the district court held a disposition hearing. (Tr. Vol. II.) The State recommended that the district court revoke Mr. Pope's probation and impose his ten-year sentence. (Tr. Vol. II, p.15, Ls.2–4.) Mr. Pope requested that the district court reinstate his probation. (Tr. Vol. II, p.16, Ls.20–24.) The district court delayed disposition in order to have Mr. Pope screened for Veteran's Court.² (Tr. Vol. II, p.19, Ls.1–7, p.20, Ls.6–7.)

In August 2019, the district court held another disposition hearing. (Tr. Vol. III.) Mr. Pope declined to be screened for Veteran's Court. (Tr. Vol. III, p.4, Ls.14–15.) Mr. Pope again requested that the district court reinstate him on probation. (Tr. Vol. III, p.5, Ls.23–24.) The district court revoked Mr. Pope's probation and executed his sentence of ten years, with two years fixed. (Tr. Vol. III, p.7, Ls.5–8; R., pp.153–54.) Mr. Pope timely appealed from the district court's disposition judgment. (R., pp.156–57.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Pope's probation and executed his underlying sentence of ten years, with two years fixed?

¹ There are three transcripts on appeal. The first, cited as Volume I, contains the admit/denying hearing, held on July 25, 2019. The second, cited as Volume II, contains the first disposition hearing, also held on July 25, 2019. The third, cited as Volume III, contains the second disposition hearing, held on August 15, 2019.

² Mr. Pope was in the Air Force from 1996 to 2000. (Presentence Investigation Report, p.8.)

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Pope's Probation And Executed His Underlying Sentence Of Ten Years, With Two Years Fixed

The district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to review a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines "whether the defendant violated the terms of his probation." *Id.* Second, "[i]f it is determined that the defendant has in fact violated the terms of his probation," the Court examines "what should be the consequences of that violation." *Id.* The determination of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

Here, Mr. Pope does not challenge his admissions to violating his probation. (Tr. Vol. I, p.8, L.21–p.10, L.24.) "[W]hen a probationer admits to a direct violation of his probation agreement, no further inquiry into the question is required." *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992) (citation omitted). Rather, Mr. Pope submits the district court did not exercise reason and therefore abused its discretion by revoking his probation.

"After a probation violation has been proven, the decision to revoke probation and pronounce sentence lies within the sound discretion of the trial court." *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). "A judge cannot revoke probation arbitrarily," however. *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). "The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision." *State v. Mummert*, 98 Idaho 452, 454 (1977). "In determining whether to revoke probation a court must consider whether probation is meeting the objective of rehabilitation while also providing adequate protection for society." *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). The court may consider the defendant's conduct before and during probation. *Roy*, 113 Idaho at 392.

In this case, Mr. Pope submits the district court did not exercise reason by revoking his probation because his probation was achieving its rehabilitative objective. Although Mr. Pope had a few setbacks, he was successfully on probation for about seven years until the violations. During that time, Mr. Pope graduated from Boise State University with a degree in communications. (Tr. Vol. II, p.15, Ls.10–13.) He also had a stable residence for six years. (Tr. Vol. II, p.15, Ls.17–19.) In addition, his parents and sister were supportive, and they lived nearby. (Tr. Vol. II, p.16, Ls.3–5.) Before his arrest for the violations, Mr. Pope worked fifty hours a week as a customer service representative for Mobile Medical Response. (Tr. Vol. II, p.15, Ls.13–16.) He took advantage of counseling and treatment through the VA for depression. (Tr. Vol. II, p.16, Ls.6–8, p.16, Ls.11–14.) He explained that his arrest and incarceration was “a massive eye-opener” and “a wake-up call.” (Tr. Vol. II, p.18, Ls.18–20; Tr. Vol. III, p.5, Ls.12–13.) Due to the arrest, he lost his job and his residence. (Tr. Vol. II, p.15, Ls.18–20; Tr. Vol. III, p.5, L.18.) Mr. Pope was “very motivated” to find a new job and obtain temporary housing through the VA. (Tr. Vol. III, p.5, Ls.18–22.) He also recognized that he became “a bit lax” on his treatment and counseling at the VA, but now he appreciated that he needed to continue his treatment and “spend a lot more time with the VA to get things in order.” (Tr. Vol. III, p.5, Ls.5–8, p.5, Ls.14–17.) Ultimately, Mr. Pope was confident with his new probation plan that he could successfully complete probation. (Tr. Vol. III, p.5, Ls.1–3.)

This information, including Mr. Pope’s college degree, steady employment, stable housing, family support, and VA opportunities, shows his probation was providing adequate protection for society while also meeting the objective of rehabilitation. In light of this information, Mr. Pope argues the district court did not exercise reason and therefore abused its

discretion by revoking his probation. Proper consideration of these facts establish the district court should have reinstated him on probation.

CONCLUSION

Mr. Pope respectfully requests this Court vacate the district court's disposition judgment and remand his case to the district court for a new probation violation disposition hearing.

DATED this 8th day of January, 2020.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCS/eas