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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47290-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2011-13365
)	
DAMON POPE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

ISSUE

Has Pope failed to establish that the district court abused its discretion by revoking his probation and executing his underlying unified sentence of 10 years, with two years fixed, imposed following his guilty plea to felony DUI?

ARGUMENT

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

A. Introduction

Pope was on probation for felony DUI when he again drove while under the influence of alcohol and an officer stopped him for driving “an estimated fifty (50) miles per hour in a posted

thirty five (35) miles per hour zone.” (PSI, pp. 2, 5¹ (parenthetical notations original).) The officer noted that Pope had “an unopened bottle of beer” in the passenger seat of his vehicle and that he smelled of alcohol, his “speech was slow and slurred,” his eyes were “glassy and bloodshot,” and he “exhibited poor motor skills and dexterity.” (PSI, p. 2.) Pope failed field sobriety tests. (PSI, p. 2.) He was transported to the jail, where he “refused a blood draw” and was restrained, after which he “continued resisting and fighting the blood draw.” (PSI, p. 2.)

The state charged Pope with felony DUI. (R., pp. 31-32.) Pursuant to a plea agreement, Pope pled guilty and the state agreed to limit its recommendation to a unified sentence of 10 years, with two years fixed, to run concurrently with the case in which Pope was on probation. (R., p. 54.) The district court imposed a unified sentence of 10 years, with two years fixed, and retained jurisdiction. (R., pp. 58-61.) In July of 2012, following the period of retained jurisdiction, the district court suspended Pope’s sentence and placed him on supervised probation for 10 years. (R., pp. 70-75.)

In June 2019, the state filed a motion for probation violation alleging that Pope had violated the conditions of his probation by committing the new crimes of stalking, unlawful entry, and resisting/obstructing an officer; possessing alcohol on two separate occasions; admitting, on September 23, 2016, “to consuming alcohol at least once a week”; consuming alcohol and frequenting bars on September 23, 2016; using methamphetamine; failing to submit to urinalysis testing; and failing to report for supervision as instructed. (R., pp. 89-91.) Pope admitted that he violated the conditions of his probation by committing the new crime of disturbing the peace (amended from stalking), “consuming alcohol at least once a week,” and

¹ PSI page numbers correspond with the page numbers of the electronic file “Pope 47290 psi.pdf.”

frequenting bars. (R., pp. 90, 147-48.) The district court continued the disposition hearing to allow Pope the opportunity to be screened for Veterans Court; however, Pope “refused to be screened for veterans court.” (8/15/19 Tr., p. 4, Ls. 14-15; R., pp. 149-51.) The district court revoked Pope’s probation and executed the underlying sentence. (R., pp. 153-55.) Pope filed a notice of appeal timely from the district court’s order revoking probation. (R., pp. 156-58.)

Pope asserts that the district court abused its discretion by revoking his probation in light of his “college degree, steady employment, stable housing, family support, and VA opportunities.” (Appellant’s brief, pp. 2-5.) Pope 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. Pope 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. (8/15/19 Tr., p. 6, Ls. 8-13.) It noted that Pope “refused to be screened for veterans court” in this case (8/15/19 Tr., p. 4, Ls. 14-15),

and that “[t]he statement in the C notes was that essentially [Pope] wanted to run [his] own probation” (8/15/19 Tr., p. 6, Ls. 22-23). The court stated, “At this point, given the unlawful entry, stalking issues that you’ve had while you were on probation, I do not find that your remaining in the community is consistent with the rehabilitative purposes of probation, if you’re not on some intensively supervised rehabilitation program like veterans court” (8/15/19 Tr., p. 6, Ls. 14-19), and, “[Y]ou really don’t seem to be interested in any rehabilitative programs or community supervision” (8/15/19 Tr., p. 6, Ls. 20-21). Accordingly, the district court revoked Pope’s probation and executed his underlying sentence. (8/15/19 Tr., p. 7, Ls. 5-8.)

The record supports the district court’s decision. Pope has demonstrated an ongoing disregard for the law, the conditions of community supervision, and the rights and well-being of others. His prior criminal record includes convictions for malicious injury to property, unlawful entry, disturbing the peace (amended from battery), invalid driver’s license, two convictions for driving without privileges, reckless driving, inattentive driving (amended from DUI), two convictions for misdemeanor DUI, and a prior conviction for felony DUI. (PSI, pp. 3-5.) His record also contains charges for fighting and two counts of assault, for which the disposition is “not recorded.” (PSI, p. 3.) Additionally, Pope has a history of violating his probation. (PSI, pp. 4-6.) He was already on supervised probation for a felony DUI when he committed the instant felony DUI offense, and he disregarded the terms of that probation by consuming alcohol, frequenting bars, and failing to enroll in community-based programs as instructed. (PSI, pp. 5-6.) Pope’s probation officer reported that Pope was “difficult to work with,” he “was always quick to argue that he does what he wants,” he “would not follow directives,” and he “displayed an attitude” that “his supervision was a joke.” (PSI, pp. 5, 129-30.) Pope’s probation officer

advised, “I bent over backwards trying to redirect Mr. Pope and deal with his attitude but in the end his behavior is clear he did what he wanted any way.” (PSI, p. 130.)

Pope completed the “MRT/TAP19” rider before he was placed on probation in this case, and he subsequently completed “all Level I Treatment at Pioneer Health Resources on 10/25/2012.” (R., p. 93; APSI, pp. 1-2.) He nevertheless continued to abuse substances while he was on probation in this case. (R., p. 93.) In September 2016, after he was arrested for public intoxication and resisting/obstructing an officer, Pope admitted that he “ha[d] been drinking at least once a week” that year. (R., pp. 131-32.) In September 2018, he “admitted to using methamphetamine” and he “may have used other things.” (R., pp. 93, 143.) In June 2019, Pope’s probation officer reported that Pope “has been caught multiple times over the past couple years with alcohol.” (R., pp. 92-93.) Furthermore, when Pope was arrested for unlawful entry and stalking in June 2019, he was “found in [the victim’s] home, kicking [the] door in,” he was “highly intoxicated,” and officers noted that police “had been called out to address Mr. Pope’s behavior a few times earlier in the week,” as Pope “was reportedly entering the victim’s home without her permission, sitting on her bed, peering into her home, in her backyard, etc.” (R., pp. 92, 144.) Pope’s ongoing substance abuse, criminal offending, and refusal to abide by the terms of community supervision demonstrate his failure to rehabilitate and his continued danger to society. The district court did not abuse its discretion when it determined that Pope was no longer a viable candidate for community supervision and revoked his probation.

On appeal, Pope argues that the district court abused its discretion by revoking his probation because he obtained a college degree, was employed, participated in programs through the VA, and had family support and stable housing. (Appellant’s brief, pp. 4-5.) However, none of these things precluded Pope from continuing to disregard the law and the terms of community

supervision. Supervision notes indicate that, during the time that Pope was on probation in this case, he was repeatedly non-compliant with the rules at both the SHIP housing facility and the Rising Sun sober living facility, he was placed on a behavioral contract and violated the contract, he failed to attend anger management classes as instructed, he moved out of sober housing without permission, he failed to report for UA testing as instructed, he failed to turn in his monthly supervision reports for multiple months in a row, and he failed to report to the probation office as instructed. (R., pp. 106-07, 109-11, 113, 122-23, 125-26, 128.) In addition, Pope was frequently uncooperative with probation officers and he consistently displayed a negative attitude toward supervision. (R., p. 137.) In June 2016, Pope's probation officer noted that Pope "has a very poor attitude towards supervision in general." (R., p. 130.) In February 2017, it was noted that Pope "is very defiant and limited with information he will give about compliance with his probation" and that he was asked "about getting into vets court, [but] he advised he does not want to do that right now." (R., p. 133.) In July 2017, Pope was assigned to a "new PO," who observed that Pope "is very resistant towards his supervision" and "has a poor attitude towards [probation officers]." (R., pp. 136-37.) In December 2018, Garden City Police informed Pope's probation officer that Pope "was given a few tickets regarding improper bicycle use" and, "[w]hen stopped by the officer," he told the officer to "eat a dick." (R., p. 143.) Pope's negative attitude continued after he violated his probation in this case, as the district court granted him the opportunity to apply for Veterans Court, and he "refused to be screened." (8/15/19 Tr., p. 4, Ls. 13-15.) Pope's unwillingness to participate in the Veterans Court program raises doubts as to his amenability for treatment. Pope's arguments do not show that the district court abused its discretion by revoking his probation, particularly given Pope's ongoing disregard for the terms of

community supervision and his unwillingness to engage in a program that offers more intensive treatment and supervision.

The record in this case supports the district court's decision to revoke Pope's probation and execute his underlying sentence. Pope was not a suitable candidate for community supervision in light of his ongoing substance abuse and criminal behavior, his refusal to abide by the conditions of probation, and his failure to rehabilitate while in the community. Pope has failed to establish an abuse of sentencing discretion.

CONCLUSION

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

DATED this 25th day of February, 2020.

/s/ Kenneth K. Jorgensen
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VICTORIA RUTLEDGE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of February, 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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