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### State v. Clopton Appellant's Brief Dckt. 47504

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NOS. 47504-2019 & 47505-2019
	)	
v.	)	TWIN FALLS COUNTY
	)	NOS. CR-2014-5177 & CR42-18-4587
JAMES DARRIN CLOPTON,	)	
	)	APPELLANT’S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, James D. Clopton argues the district court abused its discretion by revoking his probation and retaining jurisdiction. He argues the district court should have reinstated his probation because his probation was achieving its rehabilitative objective while providing adequate protection for society.

Statement of Facts and Course of Proceedings

In August 2014, Mr. Clopton pled guilty to possession of a controlled substance. (No. 47504 R.,<sup>1</sup> p.55.) In October 2014, the district court sentenced Mr. Clopton to seven years, with

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<sup>1</sup> There are two clerk’s records in this consolidated appeal. Citations to the clerk’s record in Twin Falls County No. CR-2014-5177, Supreme Court Docket No. 47504-2019, will refer to the

four years fixed, suspended the sentence, and placed him on probation for four years. (No. 47504 R., pp.54–61.)

About three and one-half years later, in April 2018, the State alleged Mr. Clopton committed a new offense of possession of a controlled substance. (No. 47505 R., pp.11–12 (criminal complaint), pp.22–23 (information).) The State also moved to revoke Mr. Clopton’s probation due to this new charge and his drug and alcohol use. (No. 47504 R., pp.74–76.) In June 2018, Mr. Clopton pled guilty to possession of a controlled substance. (No. 47505 R., p.28.)

In August 2018, the district court continued Mr. Clopton’s probation violation and sentencing hearing in order for Mr. Clopton to have shoulder surgery. (No. 47504 R., pp.89–90, 92–93; No. 47505 R., pp.43–44, 46–47.) At the continued hearing, held in October 2018, Mr. Clopton admitted to violating his probation. (No. 47504 R., p.96.) The district court reinstated Mr. Clopton’s probation. (No. 47504 R., pp.98–99.) For the new offense, the district court sentenced Mr. Clopton to seven years, with four years fixed, to be served consecutive to the earlier case. (No. 47505 R., pp.55–57.) The district court also suspend this sentence and placed Mr. Clopton on probation for five years. (No. 47505 R., pp.55–57.)

About eight months later, in June 2019, the State filed motion to revoke Mr. Clopton’s probation in both cases. (No. 47504 R., pp.105–07; No. 47505 R., pp.66–68.) The State alleged Mr. Clopton violated his probation for consuming alcohol, failing to appear for UA testing, and

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Supreme Court docket number: “No. 47504 R.” Citations to the clerk’s record in Twin Falls County No. CR42-18-4587, Supreme Court Docket No. 47505-2019, will also refer to the Supreme Court docket number: “No. 47505 R.” Similarly, there are two presentence investigation reports (“PSI”), and each will be cited with reference to the Supreme Court docket number: “No. 47504 PSI” or “No. 47505 PSI.” Lastly, there are two transcripts on appeal. The first, cited as Volume I, contains the admit/deny hearing for both cases. The second, cited as Volume II, contains the probation violation disposition hearing for both cases.

failing to pay fines and fees. (No. 47504 R., p.106; No. 47505 R., p.67.) At a joint hearing, Mr. Clopton admitted to the alleged probation violations. (Tr. Vol. I, p.8, L.14–p.10, L.17.)

Upon Mr. Clopton’s motion, the district court continued the disposition hearing because Mr. Clopton was approved for residential treatment with Port of Hope. (No. 47504 R., pp.124–26; No. 47505 R., pp.83–85.) The district court ordered Mr. Clopton’s release from jail to participate in that treatment. (No. 47504 R., p.127; No. 47505 R., p.86.)

In August 2019, the district court held the disposition hearing. (No. 47504 R., p.130; No. 47505 R., p.92.) Mr. Clopton submitted a letter from Port of Hope showing that he completed its residential treatment program and its recommendation for intensive outpatient services. (No. 47504 PSI, p.145; No. 47505 PSI, p.50.) The State recommended the district court revoke Mr. Clopton’s probation and retain jurisdiction (“a rider”). (Tr. Vol. II, p.4, Ls.10–12.) Mr. Clopton requested the district court reinstate probation. (Tr. Vol. II, p.6, Ls.19–23.) The district court agreed with the State and revoked Mr. Clopton’s probation, executed his sentence, and retained jurisdiction. (Tr. Vol. II, p.9, Ls.7–11.)

Mr. Clopton timely appealed from the district court’s disposition judgment. (No. 47504 R., pp.134–35, 138–40; No. 47505 R., pp.93–94, 97–99.)

### ISSUE

Did the district court abuse its discretion when it revoked Mr. Clopton’s probation, executed his aggregate sentence of fourteen years, with eight years fixed, and retained jurisdiction?

## ARGUMENT

### The District Court Abused Its Discretion When It Revoked Mr. Clopton's Probation, Executed His Aggregate Sentence Of Fourteen Years, With Eight Years Fixed, And Retained Jurisdiction

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. Clopton does not challenge his admissions to violating his probation. (Tr. Vol. I, p.8, L.14–p.10, L.17.) "[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. Clopton 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. Clopton submits the district court did not exercise reason by revoking his probation because his probation was achieving its rehabilitative objective while providing adequate protection for society. [REDACTED] Mr. Clopton has battled drug and alcohol addiction throughout his life. (No. 47504 PSI, pp.17–18.) Mr. Clopton grew up poor in a tumultuous, abusive household, and his father used drugs and alcohol and was in and out custody. (No. 47504 PSI, p.11.) Mr. Clopton first tried alcohol at age four, and he began drinking regularly at age twenty-one. (No. 47505 PSI, p.16.) He also started using methamphetamine at age eighteen. (No. 47505 PSI, p.16.) He did not stop using methamphetamine until 2014, over twenty years later. (No. 47505 PSI, p.16.) Unfortunately, like many individuals struggling with drug addiction, Mr. Clopton relapsed in 2018. (No. 47505 PSI, p.17.)

Despite his setbacks, Mr. Clopton was committed to his sobriety and becoming a productive member of society. Most recently, he successfully completed the Port of Hope residential program. (No. 47505 PSI, p.50.) Port of Hope reported:

James successfully completed Level 3.5 Residential treatment on 9/11/19. James participated fully in all group and individual sessions while working on treatment acceptance/resistance, guilt & shame, self-esteem/self-worth, relapse prevention & recovery support. He will not receive a completion certificate, until his balance is paid in full as he did not receive state funding but rather made private payment arrangements, demonstrating a high level of motivation and commitment. James has requested to transfer to Walker Center in Twin Falls for continued treatment, it is recommended he step down to Level 2.1 Intensive Outpatient services.

(No. 47505 PSI, p.50.) For the next step in his treatment, Mr. Clopton had contacted the Walker Center to start their intensive outpatient service. (Tr. Vol. II, p.6, Ls.9–18.) Mr. Clopton was grateful for the opportunity to participate in the Port of Hope program. (Tr. Vol. II, p.7, Ls.4–6.) He “really learned a lot” and had paid \$2,000 thus far for their services. (Tr. Vol. I, p.7, Ls.5–6,

Ls.7–8.) Mr. Clopton believed he could be successful on probation with the tools that he learned in the program. (Tr. Vol. I, p.7, Ls.8–10.) He explained:

And maybe you can do -- you know, if you want to set it for status hearing for a couple of months, let me out and let me try; and if I'm not doing good, you know, revoke my probation, send me on a rider then. But I think with the tools that I learned at the Port of Hope, that I have a lot better chance at what I am dealing with in life and what my addiction is. I learned a lot more up there about how my brain works.

(Tr. Vol. II, p.7, Ls.12–19.) In light of these facts, Mr. Clopton submits the district court did not exercise reason in its decision to revoke his probation and retain jurisdiction. He asserts the district court should have reinstated his probation to allow him to participate in the Walker Center intensive outpatient program.

#### CONCLUSION

Mr. Clopton respectfully requests this Court vacate the district court's disposition judgments and remand these cases with instructions to reinstate probation or, alternatively, for a new probation violation disposition hearing.

DATED this 9<sup>th</sup> day of March, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9<sup>th</sup> day of March, 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](mailto:ecf@ag.idaho.gov)

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

JCS/eas