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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 47504-2019 & 47505-2019
Plaintiff-Respondent,)	
)	Twin Falls County Case Nos.
v.)	CR-2014-5177 & CR42-18-4587
)	
JAMES DARRIN CLOPTON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

ISSUE

Has Clopton failed to establish that the district court abused its discretion by revoking his probation and retaining jurisdiction?

ARGUMENT

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

A. Introduction

In case number 47504, Clopton pled guilty to possession of methamphetamine and, on October 20, 2014, the district court imposed a unified sentence of seven years, with four years fixed, suspended the sentence, and placed Clopton on supervised probation for four years.

(47504 R., pp. 57-69.) In April 2018, Clopton was charged, in case number 47505, with the new crime of possession of methamphetamine. (47505 R., pp. 22-24.) The state subsequently filed a motion for probation violation in case number 47504, alleging that Clopton had violated the conditions of his probation by using methamphetamine; committing the new crime of possession of methamphetamine; consuming alcohol in December 2016, February 2017, and March 2017; and failing to submit to alcohol testing on four separate occasions. (47504 R., pp. 74-76.) Clopton admitted that he violated the conditions of his probation by using methamphetamine, committing the new crime of possession of methamphetamine, and consuming alcohol in December 2016, February 2017, and March 2017, and the district court reinstated him on probation until October 20, 2021. (47504 R., pp. 96, 98-104.) In case number 47505, Clopton pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with four years fixed, suspended the sentence, and placed Clopton on supervised probation for five years. (47505 R., pp. 28, 55-62.)

Approximately eight months later, the state filed a motion for probation violation alleging that Clopton had violated the conditions of his probation by “consuming alcohol repeatedly since being placed back on probation,” failing to appear for UA testing, failing to make any payments toward his court-ordered financial obligations, and failing to pay the costs of supervision. (47504 R., pp. 105-08; 47505 R., pp. 66-69.) Clopton admitted the allegations and the district court set a disposition hearing for August 13, 2019. (47504 R., p. 122; 47505 R., p. 81.) The court subsequently continued the disposition hearing to October 8, 2019, to allow Clopton to participate in inpatient treatment at the Port of Hope. (47504 R., pp. 127-32; 47505 R., pp. 86-91.) At the disposition hearing, the district court revoked Clopton’s probation, executed his underlying sentences, and retained jurisdiction. (47504 R., pp. 134-37; 47505 R., pp. 93-96.)

Clopton filed a notice of appeal timely from the district court's order revoking probation in each case. (47504 R., pp. 138-41; 47505 R., pp. 97-100.)

Clopton asserts that the district court abused its discretion by revoking his probation and retaining jurisdiction, rather than immediately reinstating him on probation, in light of his substance abuse and his completion of the Port of Hope inpatient treatment program. (Appellant's brief, pp. 4-6.) Clopton 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. Clopton 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. (10/8/19 Tr., p. 8, Ls. 11-17.) The court acknowledged that Clopton had completed the Port of Hope residential treatment program, but noted that the program “was only approximately a 30-day program.” (10/8/19 Tr., p. 8, L. 18 – p. 9, L. 1.) The court advised, “[W]hat I don't want to do is set you up to fail,” and, “I would

want you to carry what you learn through within a structured environment. The intensive outpatient services can be provided through the rider program. I think that would benefit you immensely in being further successful within the community.” (10/8/19 Tr., p. 8, L. 20 – p. 9, L. 6.) Accordingly, the district court revoked Clopton’s probation and retained jurisdiction. (10/8/19 Tr., p. 9, Ls. 7-10.)

The district court’s decision is supported by the record. Clopton has an extensive history of substance abuse and criminal offending. His record includes convictions for burglary, receiving known stolen property, petit theft, battery, disturbing the peace, four convictions for failure to purchase/invalid license, five convictions for driving without privileges, two convictions for possession of drug paraphernalia, and three convictions for felony possession of a controlled substance. (47505 PSI, pp. 5-9.¹) His record also includes at least 19 citations/infractions and several probation violations. (47505 PSI, pp. 8-10.) Clopton, now [REDACTED] [REDACTED] reported [REDACTED] history of using illegal drugs, and that he has been abusing alcohol since he was [REDACTED] [REDACTED] [REDACTED] (47505 PSI, pp. 2, 22-23; 47504 PSI, p. 39.²) He has participated in treatment including Drug Court from April 2009 through April 2010; outpatient treatment, Early Recovery groups, “gender specific Relapse Prevention,” and Moral Reconciliation Therapy (MRT) at the Walker Center between 2009 through 2010; Anger Management and Relapse Prevention at the Walker Center in 2011; outpatient treatment and Relapse Prevention at Proactive Advantage from “February through April, 2014”; MRT and Relapse Prevention at TARC in late 2014; parenting classes at Northstar and “random drug testing” in 2014; and

¹ 47505 PSI page numbers correspond with the page numbers of the electronic file “Supreme Court No. 47505-2019 Clopton 4587 Confidential Exhibits.pdf.”

² 47504 PSI page numbers correspond with the page numbers of the electronic file “Supreme Court No. 47504-2019 Clopton Confidential Exhibits.pdf.”

ongoing self-help group meetings at AA and/or at Celebrate Recovery. (47505 PSI, p. 16; 47504 PSI, pp. 2, 10, 14, 19, 40.) Despite all of the treatment he was afforded, Clopton continued to abuse substances while he was on probation in these cases. (47504 R., pp. 77-79, 111; 47505 R., p. 72.) He also failed to report for drug/alcohol testing on multiple occasions. (47504 R., pp. 79, 111; 47505 R., p. 72.) Even after Clopton was required to serve 64 days of jail time and was “ordered back into treatment at the Walker Center,” with increased substance testing, he continued to use substances and disregard the terms of his probation. (47504 R., pp. 110-11; 47505 R., pp. 71-72.)

Clopton demonstrated that he was no longer an appropriate candidate for probation with his continuing substance abuse, criminal offending, disregard for the conditions of community supervision, and failure to rehabilitate despite having been provided with a plethora of treatment opportunities. The district court did not abuse its discretion when it revoked Clopton’s probation, executed his underlying sentence, and retained jurisdiction.

On appeal, Clopton argues that the district court should have reinstated him on probation because he completed the Port of Hope’s residential treatment program and he planned to again participate in outpatient treatment at the Walker Center. (Appellant’s brief, pp. 4-6.) As stated by the district court, the Port of Hope residential treatment program “was only approximately a 30-day program” (10/8/19 Tr., p. 8, L. 18 – p. 9, L. 1), which was not a sufficient amount of time to address Clopton’s more-than 30-year history of substance abuse (47505 PSI, pp. 2, 22; 47504 PSI, p. 39). Furthermore, as set forth above, Clopton had already participated in numerous outpatient treatment programs, and he was receiving outpatient treatment at the Walker Center for at least the third time, when he again chose to resume his substance abuse and violate the conditions of his probation in these cases. (47505 PSI, p. 16; 47504 PSI, pp. 2, 10, 14, 19, 40;

47504 R., p. 111; 47505 R., p. 72.) The district court's decision to revoke Clopton's probation and retain jurisdiction to ensure a longer period of sobriety and intensive treatment was appropriate given Clopton's incessant substance abuse and his complete disregard for the terms of probation when in the community. Clopton's arguments do not show that the district court abused its discretion.

Clopton's ongoing substance abuse and his unwillingness to comply with the terms of community supervision demonstrate that probation was not achieving the goals of rehabilitation or protection of the community. Clopton has failed to establish that the district court abused its discretion by revoking his probation, executing his underlying sentences, and retaining jurisdiction.

CONCLUSION

The state respectfully requests this Court to affirm the district court's orders revoking Clopton's probation.

DATED this 31st day of March, 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 31st 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:

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/s/ Kenneth K. Jorgensen
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