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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 47626-2019 & 47627-2019
)	
v.)	TWIN FALLS COUNTY NOS. CR42-17-293 &
)	CR42-19-7634
MICHAEL LYNN GIBSON,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Michael Lynn Gibson admitted to violating his probation (“the probation case”) and pled guilty to possession of a controlled substance in a separate case (“the new case”). Mr. Gibson’s probation was revoked and the underlying sentence executed in the probation case; and in the new case, he was given a unified sentence of seven years, with three years fixed, concurrent to the sentence in the probation case. In this consolidated appeal, Mr. Gibson argues the district court abused its discretion by failing to retain jurisdiction in both cases.

Statement of the Facts & Course of Proceedings

In January 2017, Mr. Gibson was arrested and charged with possession or manufacture of drug paraphernalia with intent to deliver. (R., pp.10-11.) When he was arraigned on that charge, the State also charged him with being a persistent violator. (R., pp.18-21.) He then entered an *Alford*¹ plea to the charge of possession or manufacture of drug paraphernalia with intent to deliver, and the State agreed to dismiss the persistent violator enhancement. (R., p.36.) The district court sentenced Mr. Gibson to a unified sentence of nine years, with five years fixed, then suspended that sentence and placed Mr. Gibson on probation for nine years. (R., pp.55-59.)

Two years later, Mr. Gibson was pulled over after failing to signal before changing lanes. (R., pp.79, 133.) He admitted to being on probation and consented to a search of his vehicle. (R., pp.79, 133.) During the search of the vehicle, a baggie containing methamphetamine was found. (R., pp.79, 133.) Mr. Gibson was arrested and charged in the new case with possession of a controlled substance. (R., pp.76, 130.) A motion for revocation of probation was also filed in the probation case. (R., pp.68-70.) In that motion, the State argued Mr. Gibson had multiple violations of his probation, which included failing to appear for drug testing, being charged with possession of methamphetamine in the new case, having contact with another felony offender, and testing positive for methamphetamine. (R., pp.69-70.)

Before Mr. Gibson was arraigned in the new case, the State filed a motion to amend the Information to add a Part II with a persistent violator enhancement. (R., pp.147-50.) A plea agreement was then reached in the new case in which Mr. Gibson agreed to plead guilty to the possession charge, and the State agreed to withdraw the motion to add the persistent violator enhancement, and to recommend a sentence of no more than seven years, with three years fixed, concurrent to the sentence in the probation case. (R., p.158.) Mr. Gibson also applied for

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

Veterans Court, but was denied due to a 35-year-old conviction. (R., pp.96-99; PSI, p.184.) Mr. Gibson then admitted to four probation violations. (R., p.103.)

At the sentencing hearing in the new case, the State made its required recommendation of seven years, with three years fixed. (12/02/2019 Tr., p.7, Ls.6-8.) Mr. Gibson requested a rider in order to get treatment. (12/02/2019 Tr., p.9, Ls.23-24.) Mr. Gibson was then sentenced to a unified term of seven years, with three years fixed, concurrent to the sentence in the probation case. (R., pp.168-72.) In the probation case, the court revoked Mr. Gibson's probation and executed the underlying sentence. (R., pp.105-06.)

Mr. Gibson timely appealed from the revocation order in the probation case, and from the judgment of conviction in the new case. (R., pp.109, 176.) This Court then consolidated the appeals.

ISSUE

Did the district court abuse its discretion when it failed to retain jurisdiction in Mr. Gibson's cases?

ARGUMENT

The District Court Abused Its Discretion When It Failed To Retain Jurisdiction In Both Cases

A. Introduction

Mr. Gibson asserts that the district court abused its discretion when it revoked his probation and executed his original sentence of seven years, with two years fixed, in the probation case, and when it imposed and executed a prison sentence in the new case, all without retaining jurisdiction.

B. Standards Of Review

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573 (1979)). Because Mr. Gibson does not allege that his sentence exceeds the statutory maximum, in order to show an abuse of discretion he must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Jackson*, 130 Idaho at 294.

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018) (emphasis in original).

The district court is also empowered to revoke a defendant’s probation under certain circumstances. I.C. §§ 19-2602, 19-2603, 20-222. The court uses a two-step analysis to determine whether to revoke probation. *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 whether a probation violation occurred and the appropriate consequences, if any, are separate analyses. *Id.* The latter determination is “vested in the sound discretion of the trial court.” *State v. Knowlton*, 123 Idaho 916, 920–21 (1993), *abrogated on other grounds by State v. Perry*, 150 Idaho 209 (2010). “The decision to revoke probation will not be overturned on appeal absent a showing that the court abused its discretion.” *State v. Lafferty*, 125 Idaho 378, 381 (Ct. App. 1994).

C. Mitigating Evidence That Was Not Given Proper Weight By The District Court Should Have Led It To Retain Jurisdiction

Mr. Gibson asserts that the district court did not adequately give mitigating evidence its proper weight before imposing sentence in the new case, and revoking probation in the probation case. Properly considered, that mitigating evidence should have led the district court to retain jurisdiction in both of Mr. Gibson's cases. Mr. Gibson specifically asserts the district court did not properly weigh mitigating evidence regarding his amenability to treatment.

Courts are required to consider mitigating evidence in favor of the defendant. *See State v. Strand*, 137 Idaho 457, 460 (2002) (noting that when reviewing a sentence, Idaho's appellate courts will "review the record on appeal, having due regard for the nature of the offense, *the character of the offender*, and the protection of the public interest") (emphasis added); *State v. Oliver*, 144 Idaho 722, 726 (2007) (same). The impact of substance abuse on the defendant's criminal conduct is "a proper consideration in mitigation of punishment." *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). Courts should also look at "a willingness to seek treatment for an alcohol [or drug] problem" as a mitigating factor. *State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008). Sentencing courts must "give proper consideration of a defendant's [drug abuse] problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem." *State v. Nice*, 103 Idaho 89, 91 (1982).

Mr. Gibson asserts the district court erred when it did not retain jurisdiction despite his history of drug and alcohol problems and his desire for rehabilitation. During the sentencing/disposition hearing, Mr. Gibson told the court he knew he needed treatment. (12/02/19 Tr., p.10, Ls.6-19.) He informed the court that he had last been given an opportunity for a rider over thirty years previously, and wanted another chance to get the treatment the rider program offered. (12/02/19 Tr., p.10, Ls.6-19; *see also* PSI, p.26.) He told the presentence

investigator, “This time I hope that the Judge will let me get in to the V.A. for treatment. I know it will help me more than sending me back to prison.” (PSI, p.100.) Fourteen of Mr. Gibson’s crimes have involved alcohol or drugs, including eleven since he last had the opportunity to go on a rider. (See PSI, pp.6-15.) The GAIN-I evaluation listed provisional diagnoses of “Alcohol Use Disorder, Severe,” and “Stimulant Use Disorder – Amphetamine Type, Moderate” for Mr. Gibson, and recommended “Level 1 Outpatient Treatment.” (PSI, pp.30, 37.) It also reported that Mr. Gibson disclosed “first using any alcohol or other drugs at [REDACTED].” (PSI, p.30.) The presentence investigation report also shows Mr. Gibson may not be improving, but actually getting worse. (See PSI, pp.43, 52 (November 2016 GAIN evaluation showing provisional diagnosis of “Alcohol Use Disorder – Mild” and recommending Level II.I intensive outpatient treatment), pp.65-66 (February 2016 GAIN evaluation showing only alcohol and methamphetamine abuse issues, recommending only community care such as 12-step programs).)

Mr. Gibson has accepted responsibility for his actions. See *State v. Shideler*, 103 Idaho 593, 594 (1982) (reducing the defendant’s sentence, in part, because “the defendant has accepted responsibility for his acts”). He told the presentence investigator, “I feel bad for what I did. Yes the meth was found in my car and I was driving. I know that I have to take responsibility for my actions.” (PSI, p.107.) He admitted at sentencing that he had “an extensive file for drinking.” (12/02/2019 Tr., p.10, Ls.12-14.)

Mr. Gibson asserts that had the district court properly weighed all of this mitigating evidence, it should have reached a different result and retained jurisdiction in both of his cases.

CONCLUSION

Mr. Gibson respectfully requests that this Court remand his cases to the district court with instructions that the court retain jurisdiction.

DATED this 8th day of June, 2020.

/s/ R. Jonathan Shirts
R. JONATHAN SHIRTS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of June, 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

RJS/eas