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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47645-2019
)	
v.)	KOOTENAI COUNTY
)	NO. CR-2016-13602
NICKOLAS RYAN BROWN,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Nickolas Brown pled guilty to taking a motor vehicle without the owner's permission. He received a unified sentence of five years, with two years fixed. After a second probation violation, the district court revoked Mr. Brown's probation and retained jurisdiction. On appeal, Mr. Brown contends that the district court abused its discretion in revoking his probation and retaining jurisdiction.

Statement of the Facts & Course of Proceedings

In 2018, Nickolas Brown pled guilty to operating a vehicle without the owner's consent after he rolled an ATV he was driving without the owner's permission. (Presentence

Investigation Report (*hereinafter*, PSI),¹ pp.3-4.) He caused over \$8,000 in damages to the ATV. (PSI, p.3.) The district court sentenced Mr. Brown to a unified term of five years, with two years fixed, but suspended the sentence and placed Mr. Brown on probation for four years. (R., pp.99-102.)

In 2018, a report of probation violation was filed which alleged that Mr. Brown consumed alcohol, tested positive for cocaine, used marijuana, and failed to report to his probation officer as directed. (R., pp.37-57.) Mr. Brown admitted to violating some of the terms and conditions of his probation, and the district court continued him on probation for two years. (R., pp.71-73.) Mr. Brown was ordered to complete the Good Samaritan Rehabilitation inpatient program. (R., p.72.)

In March of 2019, Mr. Brown was doing well on probation. Based on Mr. Brown's progress, the district court determined that it did not need to set another probation review hearing. (R., p.80.) However, seven months later, Mr. Brown was charged with DUI. (R., p.81.) As a result of the DUI charge, Mr. Brown was accused of violating his probation. (R., pp.81-84.) Specifically, the State alleged that Mr. Brown violated his probation by entering a bar, consuming alcohol, and violating the law by being arrested for DUI. (R., pp.94-98.) Mr. Brown admitted to violating some of the terms and conditions of his probation. (Tr., p.5, Ls.5-8.)

At the disposition hearing, the State asked that Mr. Brown sentence remain suspended and that he engage in community-based treatment. (Tr., p.11, L.20 – p.12, L.14.) Mr. Brown's counsel asked the court to allow Mr. Brown to continue on probation. (Tr., p.12, L.17 – p.13,

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

L.22.) The district court revoked Mr. Brown's probation, but retained jurisdiction. (Tr., p.16, L.23 – p.17, L.6; R., pp.108-109.) Mr. Brown filed a timely I.C.R. 35(b) motion requesting leniency. (R., pp.110-12.) Mr. Brown asked the court to modify his sentence by placing him on probation with the condition that he apply for Mental Health Drug Court and complete it, if accepted. (R., p.111.) Mr. Brown filed a timely Notice of Appeal. (R., pp.113-16.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Brown's probation but retained jurisdiction?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Brown's Probation But Retained Jurisdiction

A. Introduction

After the district court heard Mr. Brown's admissions, testimony, and evidence presented at the November 27, 2019 hearing, the district court revoked Mr. Brown's probation. (Tr., p.16, L.23 – p.17, L.6.) However, the district court erred in revoking Mr. Brown's probation where he had a good job as a manager, treatment options within the community, and solid support within the community.

B. Standard Of Review

The decision to revoke probation is a two-step process. *State v. Garner*, 161 Idaho 708, 710 (2017). The two steps are as follows:

First, a court may not revoke probation without a finding that the probationer violated the terms of probation. The trial court's factual findings in a probation revocation proceeding, including a finding that a violation has been proven, will be upheld if they are supported by substantial evidence. Second, once a probation

violation has been proven, the decision of whether to revoke probation is within the sound discretion of the court.

State v. Le Veque, 164 Idaho 110 (2018) (quotation marks, brackets, and citations omitted).

C. The District Court Abused Its Discretion When It Revoked Mr. Brown's Probation But Retained Jurisdiction

Mr. Brown asserts that the district court abused its discretion when it revoked his probation. He asserts that his probation violations did not justify revoking probation, especially in light of the goals of rehabilitation and the fact that the protection of society could be best served by his continued supervision under the probation department.

In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

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).

Only if the trial court determines that alternatives to imprisonment are not adequate in a particular situation to meet the state's legitimate interest in punishment, deterrence, or the protection of society, may the court imprison a probationer who has made sufficient, genuine efforts to obey the terms of the probation order. *State v. Lafferty*, 125 Idaho 378, 382 (Ct. App. 1994). Mr. Brown asserts that the district court abused its discretion by failing to reach its decision to revoke his probation by the exercise of reason, Mr. Brown has a large support factor in the community and multiple support factors in his life to help him in the community. (R. p.97.) Mr. Brown was employed with a water sports retail company and was a floor manager. (R., p.97.) He was also working for the Good Samaritan Rehabilitation Center.

(R., p.97.) Mr. Brown has a large support factor in the community. (R., p.97.) Mr. Brown's probation officer asked the district court to require Mr. Brown to go into an inpatient treatment program with the Good Samaritan Program. (R., p.97.) Mr. Brown asserts that by revoking his probation, the district court abused its discretion by failing to reach its decision by the exercise of reason.

Mr. Brown's employer testified at his disposition hearing regarding the value Mr. Brown brings to his employer. (Tr. p.6, L.16 – p.8, L.13.) His boss testified that Mr. Brown is entrusted with a very, very wide range of responsibilities and he is:

[B]y far been the best employee I've had on our – on our lot. Um, we actually in the last year have gone through four or five guys in that position. It's difficult position, and he's been phenomenal. There early, works extra days. I mean anything you can think of as far as a good dependable employee, he's really done it.

(Tr., p.7, Ls.2-15.) Mr. Brown's boss also had information regarding his work in the church. (Tr., p.7, L.16 – p.8, L.7.) He testified that Mr. Brown was a facilitator for the Good Samaritan program and he was assisting other individuals coming out of jail with completing the program—several individuals had spoken to Mr. Brown's employer about how much he personally helped them. (Tr., p.8, Ls.1-7.) The court also heard from an employee at the Good Samaritan Rehabilitation program. (Tr., p.9, Ls.14-18.) He told the court of Mr. Brown work at the church and the mentoring he engaged in. (Tr., p.10, Ls.2-6.) He also testified that the program had a bed available for Mr. Brown so he could complete a “30-day kicker” to get him back on track, after which Mr. Brown would be on the six-month inpatient program. (Tr., p.10, Ls.7-19.)

Mr. Brown told the district court prior to his disposition:

Yes, Your Honor. Um, I just first -- I'll try to hold it together, I'm sorry, I just want to apologize not only to you, I feel I let you down in this, I feel I let my

peers down in this and myself. This whole thing was just -- it was a stumble and I made just an unwise decision and I just -- I'm asking that you give me the opportunity to prove to you that it was just that in itself, it was a stumble and nothing more, and that I can do this and that I'm willing to do this, and that's all, Your Honor.

(Tr., p.13, L.25 – p.14, L.9.) Mr. Brown was honest with the district court about his mental health conditions, and expressed to the court that he wanted medication to help with his pendulum-like swings. (Tr., p.15, L.2 – p.16, L.2.)

Even the prosecutor asked for community-based treatment and described Mr. Brown as a capable, likeable and successful guy who “has an addiction that he continues to struggle with.” (Tr., p.11, L20 – p.12, L.6.) “His probation officer I think recognizes that this is an individual dealing with addiction and not someone who is just simply being obstinate or doesn't want to address his problems.” (Tr., p.12, Ls.6-9.)

Mr. Brown asserts that the district court abused its discretion in finding that his probation violations justified revocation in light of his rehabilitative potential and his progress toward correcting the issues that brought him before the district court. In light of all of the mitigating evidence that was presented to the district court that demonstrates Mr. Brown's significant rehabilitative potential, the district court abused its discretion by failing to reach its decision by the exercise of reason when it revoked his probation.

CONCLUSION

Mr. Brown respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new probation violation hearing.

DATED this 20th day of April, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of April, 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

SJC/eas