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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47891-2020
Plaintiff-Respondent,)	
)	
v.)	Ada County Case No. CR-FE-2014-9251
)	
ROGER WAYNE QUISENBERRY,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Roger Wayne Quisenberry failed to show that the district court abused its discretion by revoking his probation?

ARGUMENT

Quisenberry Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

In 2014, the district court issued a protection order on Roger Wayne Quisenberry for Patricia Boyd. (PSI, p. 4 (citations to electronic file named “Quisenberry 47891 psi.pdf”).) Quisenberry violated the order four times and was arrested. (PSI, p. 4.) Once Quisenberry bonded

out of jail he began contacting Patricia through Facebook Messenger. (PSI, p. 4.) Quisenberry requested that Patricia meet with him, and asked her for images of her breasts. (PSI, p. 4.) Patricia ignored his messages, but Quisenberry continued to message her saying he canceled his friend request because Patricia did not accept them and he did not want to pursue her, and that he loved her. (PSI, p. 4.) Patricia's mother and brother witnessed Quisenberry driving by Patricia's residence on two occasions. (PSI, p. 4.) Authorities arrested Quisenberry during a traffic stop, and located handcuffs in the center console of his vehicle. (PSI, p. 4.)

The state charged Quisenberry with one count of felony stalking, later amended to one count of felony using a telephone to annoy, terrify, and/or harass, and one count of misdemeanor using a telephone to annoy, terrify, and/or harass. (R., pp. 41-42, 53-54.) Quisenberry pleaded guilty to both counts, and the district court sentenced him to five years, with two years determinate for felony using a telephone to annoy, terrify, an/or harass, sixty days in jail for misdemeanor using a telephone to annoy, terrify, and/or harass, and retained jurisdiction. (R., pp. 55-61, 68-69.) Following the period of retained jurisdiction, the district court placed Quisenberry on probation for five years. (R., pp. 76-80.)

Quisenberry admitted to violating his probation by failing to report to his supervising officer, failing to obtain permission to change his residence, absconding from supervision, and possessing a pipe containing methamphetamine residue. (R., pp. 113-64, 173-75; PSI, p. 240.) The district court revoked Quisenberry's probation and executed the underlying sentence of five years, with two years determinate and credit for 337 days served. (R., pp. 178-180.) Quisenberry then filed a timely appeal. (R., pp. 182-183.)

On appeal, Quisenberry argues that "the district court abused its discretion by revoking his probation." (Appellant's brief, p. 1.) Quisenberry has failed to show that the district court abused

its discretion by revoking his probation and executing the underlying sentence of five years, with two years determinate for felony using a telephone to annoy, terrify, and/or harass.

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. Quisenberry Has Shown No Abuse Of The District Court’s Discretion

The record shows the district court perceived its discretion, employed the correct legal standards to the issue before it, and acted reasonably and within the scope of its discretion.

At the disposition hearing, the district court acknowledged that Quisenberry is “█ years old,” that Quisenberry is “a high school graduate of Boise High School,” and that he “has skills, ability to make a paid living.” (03/09/2020 Tr., p. 30, L. 24 – p. 31, L. 2.) The district court stated that Quisenberry “had the benefit of a Rider back in 2015. He has now these pending charges of possession of controlled substance, methamphetamine, paraphernalia.” (03/09/2020 Tr., p. 31, Ls. 4-7.) The district court noted the presentence investigation, stating that Quisenberry “acknowledged that he was not following the conditions of his probation but was trying to help a

friend, which he did not believe was a mistake,” and that Quisenberry “doubled down on that decision – almost defiant decision, that it was more important to help a friend than avoid a new felony crime, which shows a ... major gross thinking error.” (03/09/2020 Tr., p. 31, Ls. 14-23.) The district court acknowledged that Quisenberry received a disciplinary report in January of 2020 and stated that “[t]his is not Mr. Quisenberry’s first time in jail or first time in prison. So for him not to understand, quote, ‘little,’ close quote, rules like you may not communicate with a romantic interest if that person is another inmate, and he chose deliberately to communicate anyway.” (03/09/2020 Tr., p. 32, Ls. 9-14.) The district court stated that “it shows an attitude, persistent attitude that is a thinking error that shows fundamental values have escaped Mr. Quisenberry, if he had them some point prior.” (03/09/2020 Tr., p. 32, Ls. 19-22.) The district court stated that Quisenberry “has simply been unwilling, at least recently or during the last phase of this five-year probation, to submit to supervision. If he won’t ... have contact, if he won’t submit to supervision ... there’s very little chance [he] can be successful on probation.” (03/09/2020 Tr., p. 33, Ls. 9-15.) The district court determined that Quisenberry “appears to have, at this point, a well below average rehabilitation potential,” but that “he may be specifically deterred over time by being sent to the penitentiary.” (03/09/2020 Tr., p. 33, L. 23 – p. 34, L. 1.)

Quisenberry contends that the mitigating factors—PSI recommendation, minimal infractions while in jail, that he only possessed residue and not a usable amount of methamphetamine, acceptance of responsibility, commitment to succeeding on probation, his character, family support and need to support his children, lack of prior felony convictions, employment history and amenability to treatment—show an abuse of discretion. (Appellant’s brief, pp. 5-9.) Quisenberry’s argument fails to show an abuse of discretion.

Quisenberry's extensive criminal history consists of two felony charges, and numerous opportunities of probation. (PSI, pp. 240-243.) He completely absconded from probation. When he failed to keep appointments with his probation officer, the officer attempted to locate him only to learn that he had moved without permission months before. His failure to comply with the terms of his probation and the serious new charge for possession of a controlled substance shows that Quisenberry is not amenable to community supervision.

Quisenberry's criminal history shows that probation is not a sufficient deterrent to Quisenberry, and the district court's decision to execute the underlying sentence is merited. In this case alone, Quisenberry has undergone a period of retained jurisdiction and four years of probation, and still failed to comply with the stipulations of his community supervision, showing a lack of regard for the law and the district court's orders. The instant offense in this case shows that Quisenberry's criminal behavior is a risk to society, and his unwillingness to comply with probation shows that his criminal behavior is not deterred by community supervision. Revocation of probation and execution of the underlying sentence of five years, with two years determinate and credit for 337 days served is reasonable and justified. Quisenberry has failed to show that the district court abused its discretion by revoking his probation and executing the underlying sentence in this case.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 25th day of January, 2020.

/s/ Kenneth K. Jorgensen
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Deputy Attorney General

ZACHARI S. HALLETT
Paralegal

CERTIFICATE OF SERVICE

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