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ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JACOB L. WESTERFIELD
Deputy State Appellate Public Defender
I.S.B. #9841
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47774-2020
)	
v.)	ADA COUNTY NO. CR01-18-17077
)	
NOLAN LEE HOBBS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Nolan Hobbs was on probation when the State filed a motion to revoke probation. Following his entry of admissions to one of the alleged probation violations, the district court revoked Mr. Hobbs’s probation and executed his underlying sentence. Mr. Hobbs appeals, and he argues the district court abused its discretion by revoking his probation.

Statement of Facts and Course of Proceedings

In April 2018, a criminal complaint was filed alleging that Mr. Hobbs committed three counts of grand theft and two counts of burglary. (R., pp.10-12.) Mr. Hobbs subsequently pled

guilty to one count of grand theft pursuant to a plea agreement.¹ (R., pp.34-42.) Mr. Hobbs was sentenced to seven years, with three years fixed, and the district court retained jurisdiction. (R., pp.43-45.) Mr. Hobbs was released onto probation after successfully completing his rider. (R., pp.51-56.)

In June 2019, a motion for probation violation was filed. (R., pp.60-72.) Mr. Hobbs was alleged to have committed the following violations of the terms of his probation: (1) committing the crime of felony possession of a controlled substance, (2) committing the crime of possession of drug paraphernalia, (3) committing the crime of operating a motor vehicle while under the influence of alcohol (“DUI”), (4) possessing methamphetamine and consuming alcohol, (5) failing to pay fines as ordered by the court, and (6) failing to pay restitution as ordered by the court. (R., p.61.) Mr. Hobbs was subsequently found not guilty at trial on all of the charges referenced in the motion for probation violation except for the misdemeanor DUI. (Tr., p.4, Ls.6-13.) Mr. Hobbs subsequently admitted to violating his probation by committing the DUI. (Tr., p.4, Ls.10-20, p.6, L.9—p.10, L.23.)

At the disposition hearing, the State recommended that the district court revoke Mr. Hobbs’s probation and execute his underlying sentence. (Tr., p.13, Ls.3-6.) Mr. Hobbs’s defense counsel recommended that the district court reinstate Mr. Hobbs’s probation. (Tr., p.21, Ls.1-8.) The district court revoked Mr. Hobbs’s probation and executed his underlying sentence. (R., pp.78-80; Tr., p.24, L.22—p.25, L.1.) Mr. Hobbs filed a timely notice of appeal from the order revoking his probation. (R., pp.81-84.)

¹ Pursuant to the plea agreement, the other charges were dismissed.

Mr. Hobbs filed a timely motion for reduction of sentence pursuant to Idaho Criminal Rule 35. (R., p.81.) The district court subsequently denied Mr. Hobbs's motion to reduce sentence.² (R., pp.86-87.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Hobbs's probation and executed his underlying sentence?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Hobbs's Probation And Executed His Underlying Sentence

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. Hobbs does not challenge his admission to violating his probation. "[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. Hobbs submits that the district court did not exercise reason, and therefore abused its discretion, by revoking his probation.

² The denial of Mr. Hobbs's motion to reduce sentence is not being challenged in this appeal.

“A district court's decision to revoke probation will not be overturned on appeal absent a showing that the court abused its discretion.” *Sanchez*, 149 Idaho at 105.

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).

“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). Just as is the case when reviewing the original imposition of sentence, the appellate court will independently review the entire record, “focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.” *State v. Pierce*, 150 Idaho 1, 5 (2010). The court may consider the defendant’s conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

During the presentence investigation (“PSI”) prior to the original sentencing, Mr. Hobbs reported that he had been using methamphetamine regularly prior to his arrest and acknowledged that he needed a structured substance abuse treatment program. (Aug. R.,³ pp.13-14.) In his

³ Citations to the “Aug. R.” refer to the 76-page electronic document that contains Mr. Hobbs’s PSI, GAIN-I, and mental health examination report that were prepared for an unrelated felony case in which Mr. Hobbs was sentenced at around the same time as this case. The court minutes from the change of plea hearing on August 20, 2018 indicate that Mr. Hobbs’s attorney in this matter submitted these confidential materials to the district court for review prior to sentencing. (R., p.32.) The district court stated that it had reviewed “the original presentence materials” prior to the disposition hearing. (Tr., p.12, Ls.11-15.)

Global Appraisal of Individual Needs (“GAIN”) assessment, Mr. Hobbs was diagnosed with a moderate stimulant use disorder. (Aug. R., pp.68-69.) Mr. Hobbs’s responses indicated that he had a moderate motivation for treatment. (Aug. R., p.71.) Prior to being released onto probation, Mr. Hobbs successfully completed the programming on his rider without any disciplinary sanctions. (PSI,⁴ pp.4-8.)

Mr. Hobbs had been gainfully employed prior to his arrest for the probation violations, and he still would have had that employment available to him if he was released back onto probation. (Tr., p.17, Ls.20-24, p.18, Ls.14-18; R., p.71.) While on probation, Mr. Hobbs worked on reuniting with his young daughter who was in the state’s custody, started grief counseling for his parents’ deaths, attended church, and participated in his substance abuse treatment. (Tr., p.17, L.24—p.18, L.2.) While in custody after his arrest on the probation violations, Mr. Hobbs maintained himself appropriately, became a mediation coordinator for a tier in the programs dorm, attended weekly Alcoholics Anonymous (“AA”) meetings, met with other inmates for nightly self-run AA meetings, arranged for transportation for treatment and work upon his release, completed a freedom from smoking program, and was accepted into a sober living home. (Tr., p.18, L.19—p.19, L.23; PSI, pp.162-65.) Mr. Hobbs took responsibility for his actions in the DUI case and informed the district court that his “foolish actions” were “totally unacceptable” and that he put not only himself in danger but others as well. (Tr., p.21, Ls.11-22.)

In light of these facts, Mr. Hobbs submits that the district court did not exercise reason, and thus abused its discretion, by revoking his probation. Mr. Hobbs’s positive actions while in custody, as well as his amenability to controlled substance treatment, demonstrated that he could

⁴ Citations to the PSI refer to the 165-page electronic document included with the confidential materials that is labeled “Conf.Docs.-Hobbs.”

be successful in the community. The district court should have reinstated his probation at the disposition hearing.

CONCLUSION

Mr. Hobbs respectfully requests that this Court vacate the order revoking his probation, and that it remand his case to the district court with an instruction that he be returned to probation.

DATED this 14th day of October, 2020.

/s/ Jacob L. Westerfield
JACOB L. WESTERFIELD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of October, 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

JLW/eas