

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

COLLEEN D. ZAHN  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN  
Deputy Attorney General  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
Email: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47774-2020
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-18-17077
	)	
NOLAN L. HOBBS,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Nolan L. Hobbs failed to show that the district court abused its sentencing discretion when it revoked his probation?

ARGUMENT

Hobbs Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

The state charged Hobbs with three counts of grand theft and two counts of burglary. (R., pp. 22-24.) Hobbs pled guilty to one count of grand theft. (R., p. 33.) The district court imposed a sentence of seven years with three years determinate, concurrent with a Canyon County sentence,

and retained jurisdiction. (R., pp. 43-44.) After the rider the district court suspended execution of the sentence and placed Hobbs on probation. (R., pp. 51-54.)

Less than two months later, the state filed an allegation of a probation violation for committing a DUI, among other offenses. (R., pp. 60-72.) Hobbs admitted violating his probation by committing the DUI. (R., p. 76.) The district court revoked probation. (R., pp. 78-79.)

On appeal Hobbs asserts the district court abused its discretion because he did well on his rider and while incarcerated awaiting his trial and probation violation proceedings. (Appellant's brief, pp. 3-6.) Hobbs' actions of committing the new criminal offense of driving under the influence and thus putting others at risk show that the district court did not abuse its discretion.

B. Standard Of Review

“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, 113, 426 P.3d 461, 464 (2018) (quotation marks omitted). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “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.” State v. Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Hobbs Has Shown No Abuse Of The District Court's Discretion

“In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society.” State v. Del Critchfield, No. 45925, 2020 WL 992593, at \*3 (Idaho Ct. App. Mar. 2, 2020). Here the district

court specifically concluded that probation was not protecting society because Hobbs chose to drink and drive and place others at risk. (Tr., p. 23, L. 22 – p. 25, L. 8.) Also significant to the court was Hobbs’ “pretty rotten record” of criminal offenses, which had made the district court reluctant to place Hobbs on the rider in the first place. (Tr., p. 23, Ls. 7-24.)

The record supports the district court’s determination that probation was not protecting society. This case arose from Hobbs using a wrongfully obtained financial transaction card. (R., p. 23.) The Canyon County conviction resulting in the concurrent sentence there arose out of possessing methamphetamine, found during an investigation of Hobbs passing bad checks. (PSI, p. 4 (citation to electronic page numbers of “Appeal Augmented Clerks Record.pdf”).) Hobbs’ criminal record was accurately described as “rotten,” completing the hat trick of drug felonies, thefts, and crimes of violence. (PSI, pp. 5-9.) His performance on probation was very poor, committing new offenses and placing the community at risk very shortly after his release on probation. (R., pp. 60-72.) The district court did not abuse its discretion by revoking probation.

Hobbs claims the record “demonstrated that he could be successful in the community.” (Appellant’s brief, pp. 5-6.) Hobbs, however, had a proven track record of not being “successful in the community.” Indeed, the community was at risk from his behavior before and after he was placed on probation. Hobbs’ argument merely ignores the district court’s findings and large portions of the record. He has shown no abuse of discretion because the record supports the district court’s findings and conclusion.

CONCLUSION

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

DATED this 23rd day of November, 2020.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of November, 2020, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JACOB L. WESTERFIELD  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd