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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47926-2020
)	
v.)	BONNER COUNTY NO. CR-2017-5550
)	
JOEL EDWARD GROVER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
)	

STATEMENT OF THE CASE

Nature of the Case

When he was [REDACTED] Joel Edward Grover pleaded guilty to felony possession of a controlled substance, methamphetamine. The district court imposed a unified sentence of four years, with two years fixed, and retained jurisdiction. The district court later suspended the sentence and placed Mr. Grover on supervised probation for a period of two years. Mr. Grover subsequently admitted to violating his probation in three different hearings, and the district court ultimately revoked probation and retained jurisdiction. In this appeal, Mr. Grover asserts that the district court abused its discretion when it revoked his probation and retained jurisdiction.

Statement of the Facts & Course of Proceedings

A probation and parole officer contacted the Bonner County Sheriff's Office, and reported that Mr. Grover was in custody for a probation violation following a probation search. (See File Review Presentence Report, 1/11/18 (*hereinafter*, PSI), p.1.) At the time, Mr. Grover was on supervised probation in Bonner County No. CR-2016-6262. (See PSI, p.2; R., pp.79-80.) A deputy contacted the probation officer at the Country Inn, and the probation officer stated she had received information that Mr. Grover was staying at the Country Inn instead of his reported address. (See PSI, p.1.) The probation officer found Mr. Grover hiding under the bed in the room he shared. (See PSI, p.1.) Mr. Grover admitted that a methamphetamine pipe was under the bed, but denied owning the pipe. (See PSI, p.1.) Mr. Grover's roommate admitted to having a marijuana pipe in his suitcase. (PSI, p.1.) The officers confiscated the pipes and took Mr. Grover to the Bonner County Detention Center. (See PSI, p.1.)

The State charged Mr. Grover by Information with felony possession of a controlled substance, methamphetamine, misdemeanor unlawful possession of drug paraphernalia, and a persistent violator sentencing enhancement. (R., pp.60-62.) Pursuant to a plea agreement, he pleaded guilty to an amended charge of felony possession of a controlled substance, methamphetamine. (See R., pp.79-80, 85-95, 99.) The district court imposed a unified sentence of four years, with two years fixed, and retained jurisdiction. (R., pp.113-16.) Mr. Grover filed an Idaho Criminal Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.117-18, 123-24.)

After Mr. Grover participated in a "rider" and made the program's honor unit, the district court suspended the sentence and placed him on supervised probation for a period of two years. (R., pp.129-35; *see* Addendum to the Presentence Investigation, filed 10/15/18, p.2; R., p.127.)

About three weeks later, the State filed a Motion to Revoke Probation, alleging Mr. Grover had violated the terms and conditions of his probation. (R., pp.136-38.) He admitted to violating his probation by not reporting to probation and parole after his release from jail. (See R., pp.137-38, 158.) The district court continued Mr. Grover on probation. (R., pp.163-66.)

About two months later, the State filed a second Motion to Revoke Probation, alleging Mr. Grover had violated the terms and conditions of his probation. (R., pp.174-76.) He initially denied the allegations. (See R., p.193.) Mr. Grover subsequently admitted to violating his probation by not reporting to probation and parole after his release from jail. (See R., pp.175-76, 195.) The district court continued Mr. Grover on probation, with the additional term that he immediately report to probation. (R., pp.197-99.)

Six months later, the State filed a third Motion to Revoke Probation, alleging Mr. Grover had violated the terms and conditions of his probation. (R., pp.201-03.) Mr. Grover initially denied the allegations. (See R., p.221.) He then admitted to violating his probation through four separate instances of absconding from supervision. (Tr., p.5, L.21 – p.6, L.20; see R., pp.202-03, 233.) The district court accepted Mr. Grover's admissions. (Tr., p.6, Ls.21-24.)

Mr. Grover recommended that the district court continue him on probation, with some local jail time. (See Tr., p.9, L.6 – p.10, L.5.) Defense counsel suggested that executing the sentence or retaining jurisdiction would hinder treating Mr. Grover's serious heart problems. (See Tr., p.8, L.24 – p.9, L.21.) Mr. Grover's probation officer had recommended that, if Mr. Grover were found to have violated his probation, he be considered for a retained jurisdiction. (See R., p.203.) The State recommended that the district court revoke probation and execute the sentence. (See Tr., p.7, Ls.17-25.) The district court revoked Mr. Grover's probation and retained jurisdiction. (R., pp.234-39.)

Mr. Grover filed a Notice of Appeal timely from the Disposition Judgment, Probation Violation(s).¹ (R., pp.244-46.)

ISSUE

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

ARGUMENT

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

Mr. Grover asserts that the district court abused its discretion when it revoked his probation and retained jurisdiction. The district court should have instead followed Mr. Grover's recommendations and continued him on probation, with some local jail time. (*See* Tr., p.9, L.6 – p.10, L.5.)

A district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, 19-2603 & 20-222. "A district court's decision to revoke probation will not be overturned on appeal absent a showing that the court abused its discretion." *State v. Sanchez*, 149 Idaho 102, 105 (2009). In reviewing a district court's discretionary decision, appellate courts conduct an inquiry to determine whether the district court correctly perceived the issue as one of discretion, acted within the boundaries of its discretion, acted consistently with the applicable legal standards, and reached its decision by an exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

Appellate courts use a two-step analysis in reviewing a probation revocation proceeding. *Sanchez*, 149 Idaho at 105. First, the appellate court determines "whether the defendant violated

¹ Mr. Grover also filed a Motion for Reduction of Sentence Pursuant to I.C.R. 35, which the district court denied. (R., pp.240-43.)

the terms of his probation.” *Id.* “If it is determined that the defendant has in fact violated the terms of his probation, the second question is what should be the consequences of that violation.” *Id.*

Mr. Grover concedes he admitted to violating his probation by absconding from supervision. (Tr., p.5, L.21 – p.6, L.20; *see R.*, pp.202-03, 233.) When 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). Thus, this Court may go to the second step of the analysis and determine whether the district court abused its discretion when it revoked Mr. Grover’s probation. *State v. Hoskins*, 131 Idaho 670, 672 (Ct. App. 1998) (internal citations omitted). As Idaho’s appellate courts have held, “[i]f a knowing and intentional probation violation has been proved, a district court’s decision to revoke probation will be reviewed for an abuse of discretion.” *Sanchez*, 149 Idaho at 106 (quoting *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001)).

However, probation may not be revoked arbitrarily. *State v. Adams*, 115 Idaho 1053, 1055 (Ct. App. 1989). The purpose of probation is to provide an opportunity to be rehabilitated under proper control and supervision. *Peterson*, 123 Idaho at 50. Thus, 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). The district court may revoke probation if it reasonably concludes from the defendant’s conduct that probation is not achieving its rehabilitative purpose. *Adams*, 114 Idaho at 1055. The district court may consider the defendant’s conduct both before and during the probationary period. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

In this case, Mr. Grover's counsel explained that Mr. Grover was suffering from serious heart problems. Defense counsel provided the district court a letter from Mr. Grover's doctor, who wrote that Mr. Grover "has congestive heart failure with a nonischemic cardiomyopathy and very poor heart function." (Letter from Gregory D. Pennock, MD, FACC, FASE, Kootenai Heart Clinics Northwest, 3/29/19 (*hereinafter*, Letter from Dr. Pennock).) Dr. Pennock stated, "From a medical standpoint, he needs ongoing close follow-up to optimize his cardiac medications." (Letter from Dr. Pennock.)

At the disposition hearing, Mr. Grover's counsel told the district court, "I do have proof that my client was in the hospital at least twice as recently as January of 2020." (Tr., p.8, L.24 - p.9, L.1.) Defense counsel also stated: "He's very ill. He's not trying to run, he's not trying to commit new crimes. His current heart condition from what I understand could be potentially fatal." (Tr., p.9, Ls.2-5.) Per defense counsel, "He's hoping the Court will give him local time of some sort, grant him furloughs once he gets his medical appointments set up and then just close his case." (Tr., p.9, Ls.7-10.)

Mr. Grover's counsel did not think that "imposition or even a rider would be appropriate at this point" for Mr. Grover, "based on his age and his medical condition." (Tr., p.9, Ls.16-18.) Mr. Grover "simply wants to live out the rest of his days and get his medical treatment." (Tr., p.9, Ls.19-21.) Defense counsel thought "it's been a real struggle for him to comply with probation and to deal with the heart issue. When it comes down to going to the doctor or making your PO appointment, he's not saying it's right, but he chose the doctor." (Tr., p.9, L.25 - p.10, L.5.)

Mr. Grover also had an unstable living situation. When the district court asked him what not following through with probation had to do with congestive heart failure, Mr. Grover replied:

“I suppose it doesn’t have anything to do with it, Your Honor, but I do not have a stable place to stay and, you know, when you’re dealing with [addiction], so to speak, it sure makes your outlook on life a whole lot different.” (Tr., p.11, L.24 – p.12, L.9.) Dr. Pennock wrote that Mr. Grover “has done a good job in cleaning up his life,” and “[p]rior to his incarceration, he had stopped drinking, smoking and all drug use.” (Letter from Dr. Pennock.)

Moreover, Mr. Grover told the district court: “I just want to do what’s right, you know, and I understand you’ve given me way more chances than what I deserve. But this is just—my whole outlook is just completely different. I mean, I just want to do what’s right.” (Tr. p.12, Ls.9-14.) When the district court asked how he would take care of himself if he did not have a stable place to live, Mr. Grover stated, “I do have a stable place to stay and I do have people that are going to help take care of me and, you know—and, you know, I will comply.” (Tr., p.12, Ls.15-21.) He would “do testing, I’ll do whatever you want me to do.” (Tr., p.12, Ls.21-22.) Mr. Grover concluded: “I’m just begging mercy on the Court to give me this one last chance. I want to prove that I can do this and I want to do it while I’m still alive.” (Tr., p.12, Ls.23-25.)

In light of the above, Mr. Grover asserts the district court abused its discretion when it revoked his probation and retained jurisdiction. The district court should have instead followed Mr. Grover’s recommendations and continued him on probation, with some local jail time.

CONCLUSION

For the above reasons, Mr. Grover respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 29th day of October, 2020.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th 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

BPM/eas