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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47986-2020
Plaintiff-Respondent,)	
)	
v.)	Ada County Case No. CR-MD-2016-948
)	
JAMES ROBERT KUEHNEL, JR.,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has James Robert Kuehnel, Jr. failed to show that the district court abused its discretion by revoking his probation and executing the underlying sentences in this case?

ARGUMENT

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

A. Introduction

In 2016, the state charged James Robert Kuehnel, Jr. with one count of felony domestic violence, one count of felony intimidating, impeding, influencing or preventing the attendance of a witness, one count of misdemeanor intentional destruction of a telecommunication line or

telecommunication instrument, six counts of misdemeanor violation of a no contact order and one felony count of violation of a no contact order. (R., pp. 55-58.) Additionally, the state filed a persistent violator enhancement. (R., pp. 77-78.) In a binding plea agreement, Kuehnel pleaded guilty to felony intimidating a witness, two counts of misdemeanor violation of a no contact order and one count of felony violation of a no contact order. (R., pp. 83-95.) For each of the two misdemeanor no contact order convictions, the district court sentenced Kuehnel to 120 days, with credit for 120 days served. (R., p. 96.) For the felony intimidating a witness conviction, the district court sentenced Kuehnel to five years, with two years determinate, and three years indeterminate for felony violation of a no contact order. (R., pp. 100-103.) The district court retained jurisdiction, and subsequently placed Kuehnel on probation for a period of eight years. (R., pp. 100-103, 111-116.)

In January of 2020, the state filed a motion for bench warrant for probation violation, accusing Kuehnel of violating the terms of his probation by failing to obtain permission from his supervising officer before changing residences, failing to maintain full-time employment, consuming and/or possessing an alcoholic beverage, and using methamphetamine after failing two urinalyses. (R., pp. 140-142.) The district court revoked Kuehnel's probation, reduced the sentence for intimidating a witness from five years, with two years determinate to five years, with one year determinate, and executed the underlying sentences. (R., pp. 184-185.) The district court ordered that the sentences run consecutive to each other, and granted credit for 486 days served on both counts. (R., pp. 184-185.) Kuehnel then filed a Rule 35 motion, which the district court denied. (R., pp. 188, 196-199.)

Kuehnel filed a timely appeal, in which he argues that "the district court abused its discretion by revoking his probation." (R., pp. 193-194; Appellant's brief, p. 1.) Kuehnel has

failed to show that the district court has abused its discretion by revoking his probation and executing the underlying sentences in this case.

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)).

The decision to place a defendant on probation is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Reed, 163 Idaho 681, 684, 417 P.3d 1007, 1010 (Ct. App. 2018) (citations omitted). Rehabilitation and public safety are dual goals of probation. State v. Le Veque, 164 Idaho 110, 114, 426 P.3d 461, 465 (2018). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521. State v. Reber, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002) (citing State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982)).

C. Kuehnel 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 Kuehnel's probation officer's notes, which indicated that Kuehnel was "resistant to supervision, struggled to get or keep a job. Had a bad attitude. Thought that the P.O.'s were just out to get him. Had a long history of minimizing responsibility. Didn't express much remorse. Blamed others. Had a case of victimitis. Using drugs. History of various probation/parole violations, non cooperation." (Tr., p. 24, Ls. 15-21.) The district court noted that Kuehnel was "working steadily on the batterer's course plan, such that [he was] allowed a face-to-face contact with [his wife, Michelle,] starting in November, but that ultimately resulted in more problems and now this probation violation case." (Tr., p. 24, L. 23 – p. 25, L. 1.) The district court stated that "the one thing that probably concerned [the district court] the most in all the materials . . . was the letter that [Kuehnel] wrote to Michelle that was attached to the 2012 PSI, which indicated that [he was] providing directions on how to cook methamphetamine." (Tr., p. 25, Ls. 14-19.) The district court stated that "they tell us that in a cross section of society that there's about two or three percent of people who have these personality disorders or traits that you sometimes hear referred to as psychopaths or sociopaths," and "[w]hen [Kuehnel] said [he wasn't] sure [he] knew how to accept responsibility . . . [the district court thought] that's consistent with having either personality traits or personality disorders that are consistent with these things." (Tr., p. 26, L. 25 – p. 27, L. 12.) The district court determined that "the sentence here or the PV disposition is fair, just and reasonable." (Tr., p. 31, Ls. 18-19.)

Kuehnel argues that the mitigating factors—attendance of treatment programs, family support, employment history, probation officer comments and completion of retained jurisdiction—

show an abuse of discretion. (Appellant's brief, pp. 5-6.) Kuehnel's argument does not show an abuse of discretion. Kuehnel's LSI core is high, and his extensive criminal history consists of numerous violent offenses. (PSI, pp. 3-4, 78.) In the 2012 PSI, the investigator stated that Kuehnel "is an entitled individual, who sees little fault in himself and does not believe that the laws and conditions of supervision apply to him," and did not "consider [Kuehnel] to be a candidate for community supervision." (PSI, p. 46.)

The district court granted Kuehnel probation however, and he failed to comply with the stipulations of community supervision. The district court reduced the determinate portion of Kuehnel's sentence for intimidating a witness, and with 486 days credit for time served, he's already eligible for parole. His failure to comply with community supervision shows that he's not a suitable candidate for probation, and the sentences provides proper punishment and deterrence to Kuehnel's criminal behavior. Kuehnel has the opportunity to prove to the Parole Board that he's amenable to community supervision, but after a period of retained jurisdiction and a failed term probation, he's exhausted the district court's options for community supervision. Kuehnel's extensive criminal history, risk to reoffend, failure to comply with probation and the seriousness of the instant offenses justify the district court's decision to revoke Kuehnel's probation and execute the underlying sentences. Kuehnel has failed to show that the district court abused its discretion by revoking his probation and executing the underlying sentences.

CONCLUSION

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

DATED this 22nd day of December, 2020.

/s/ Kenneth K. Jorgensen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of December, 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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