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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) Nos. 48083-2020 & 48084-2020
 Plaintiff-Respondent,)
) Twin Falls County Case Nos.
 v.) CR-2015-131 & CR-2015-1942
)
 TROY ALLEN BACA,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS**

HONORABLE BENJAMIN J. CLUFF
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Troy Allen Baca appeals from the district court's order revoking his probation and executing his underlying sentences in case numbers CR-2015-131 and CR-2015-1942.

Statement Of The Facts And Course Of The Proceedings

Law enforcement responded to a domestic battery call by A.A., who alleged Baca picked her up and threw her down during an argument. (PSI, p.5.) Officers found a methamphetamine pipe on top of Baca's backpack; inside the backpack, officers found twelve small zip-lock baggies containing a white powder residue and one baggie containing a trace amount of white powder. (PSI, p.6.) Baca admitted he recently used marijuana and methamphetamine. (PSI, p.6.) The white powder residue tested positive for amphetamine. (PSI, p.6.) The state charged Baca with possession of a controlled substance in case number CR-2015-131. (R., pp.26-27.)

Around a month-and-a-half later, law enforcement responded to an unknown injury accident. (PSI, p.6.) Baca, A.A., and their two children were at the scene; all complained of injuries. (PSI, p.6.) Baca was combative with medical personnel on the scene. (PSI, p.6.) His eyes were glassy and bloodshot and his speech was slurred. (PSI, p.6.) One of the children told law enforcement that A.A. was driving when Baca reached over and pulled the steering wheel. (PSI, p.7.) A.A. told law enforcement the same thing: she was driving when Baca became upset with her, reached over, and pulled the steering wheel. (PSI, p.7.) This caused A.A. to lose control of the vehicle; the vehicle rolled and the children were ejected. (PSI, p.7.) Afterwards, Baca wanted them to get back in the vehicle and drive away but A.A. refused, so Baca got in the vehicle himself and attempted to leave A.A. and the injured children behind. (PSI, p.7.) However, the vehicle was damaged and traveled only a short distance. (PSI, p.7.) A.A. told officers that Baca

wanted her “to take the blame.” (PSI, p.7.) Later while in jail, Baca called A.A. and advised her what to say and do to get the charges against him “thrown out.” (PSI, pp.7, 32-38.) In case number CR-2015-1942, the state charged Baca with two counts of felony injury to child and one count of witness intimidation. (R., pp.162-63, 168-70.)

Pursuant to a plea agreement, Baca pleaded guilty to all charges. (R., pp.40-50, 172-82.) The district court sentenced Baca to five years with three years fixed in the drug case and retained jurisdiction. (R., pp.62-68.) In the other case, the district court sentenced Baca to ten years with five years fixed on each count of injury to child and five years indeterminate for witness intimidation, with the sentences to run concurrently with each other and his sentence in the drug case, and retained jurisdiction. (R., pp.194-201.) After the rider, the district court suspended Baca’s sentences and placed him on a four-year period of probation. (R., pp.75-80, 210-14.)

The state filed a motion to revoke probation, alleging that Baca violated the terms of his probation by committing a battery on his wife, and failing to make himself available for supervision or absconding.¹ (R., pp.91-95, 224-28.) Baca admitted both allegations. (R., pp.109, 242; 2/25/2020 Tr., p.7, L.19 – p.9, L.8.) The district court revoked Baca’s probation and imposed his underlying sentences. (R., pp.120-21, 139-41, 247-48, 264-66.) Baca filed a Rule 35 motion for reduction of his sentences. (R., pp.123-26, 250-53.) The district court denied his motion with respect to the drug case, but reduced Baca’s sentences on the each injury to child count to ten years with four years fixed. (R., pp.127, 254.) Baca filed timely notices of appeal. (R., pp.129-32, 256-59.) This Court consolidated the cases on appeal. (R., p.268.)

¹ The motion also alleged Baca used controlled substances while on probation. (R., p.92.) However, the attached supporting documentation referred only to the conduct of a Mr. Mosqueda in Texas. (R., p.94.) Ultimately, the district court found the state failed to meet its burden with respect to that allegation. (See R., pp.109-10; see also 2/25/2020 Tr., p.14, Ls.5-6.)

ISSUE

Baca states the issue on appeal as:

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

(Appellant's brief, p.4.)

The state rephrases the issue as:

Has Baca failed to show that the district court abused its discretion when it revoked his probation?

ARGUMENT

Baca Has Failed To Show That The District Court Abused Its Discretion When It Revoked His Probation

A. Introduction

Baca argues the district court abused its discretion when it revoked his probation. (Appellant’s brief, pp.5-8.) Baca has shown no abuse of discretion. The district court considered the conduct underlying Baca’s admitted violations of the terms of his probation and the rehabilitative options he had already been given, as well as the protection of society. The district court did not abuse its discretion when it revoked Baca’s probation based on its finding that Baca posed a high risk of reoffending and probation was not serving its rehabilitative purpose.

B. Standard Of Review

In reviewing the district court’s decision to revoke probation, the Court employs “a two-step analysis.” State v. Sanchez, 149 Idaho 102, 105, 233 P.3d 33, 36 (2009) (citation omitted). First, the appellate court determines “whether the defendant violated the terms of his probation.” Id. If the appellate court determines “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.

The decision 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). “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, 233 P.3d at 36 (citation omitted). When a trial court’s discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the

specific choices before it; and (4) reached its decision by an exercise of reason. State v. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

C. Baca Has Failed To Show That The District Court Abused Its Discretion

When reviewing the propriety of a probation revocation, the focus of the inquiry is the conduct underlying the trial court's decision to revoke probation. State v. Morgan, 153 Idaho 618, 621, 288 P.3d 835, 838 (Ct. App. 2012). "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, 899 P.2d 984, 985 (Ct. App. 1995) (citation omitted). If the court reasonably concludes from the defendant's conduct that probation is not achieving its rehabilitative purpose, then probation may be revoked. See State v. Mummert, 98 Idaho 452, 454-55, 566 P.2d 1110, 1112-13 (1977).

The facts underlying Baca's probation violations support the district court's decision to revoke probation. Baca's first probation violation was based on his commission of a battery on his wife. During a heated argument, Baca head-butted his wife in the face. (R., p.101.) When officers responded, his wife's nose was "swelling and crooked"; she reported her pain level was a "10, on a scale of 1-10." (R., p.101.) Baca was charged with and convicted of Fourth Degree Assault. (PSI, pp.87-88.) Second, Baca failed to make himself available for supervision from June to August of 2019, despite numerous attempts by probation to contact him. (See R., pp.94-95.) Probation officers contacted Baca's listed employer and found that Baca had been fired for failing to show up. (R., p.94.) Probation officers attempted to contact Baca at his listed residence, but were unable to do so; his daughter reported Baca wasn't home and "she doesn't see him often." (R., pp.94-95.) As Baca's probation officer noted, Baca's disregard of the terms of probation demonstrate that he does "not appreciate the opportunity of probation awarded to him" and has

“not shown he is ready to be a productive member of society.” (R., p.95.) Thus, the probation officer opined that Baca “is in need of a greater level of supervision and treatment at this time and would benefit from a more structured environment,” and recommended Baca’s probation be revoked. (R., p.95.)

Further, Baca has failed to take accountability for his actions and instead has minimized his conduct by downplaying it and placing the blame on others. In the PSI, Baca reported he “wasn’t aware [he] was doing anything wrong!” (PSI, p.85.) He denied responsibility for his actions, blaming his conviction for Fourth Degree Assault on his wife and characterizing his failure to be available for supervision as “a big misunderstanding in an otherwise perfect 4 years of supervision (no violations or sanctions).” (PSI, pp.85, 94-95.) However, his probation had not been “perfect”; during a 2018 home visit, his probation officer found alcohol in his home and Baca admitted to consuming alcohol while on probation, leading to him serving several days in jail. (PSI, p.88.)

Further, Baca “was not forthright in many areas of his interview” and seems unwilling to recognize his issues, despite opportunities for treatment and rehabilitation. (See PSI, p.95.) Baca received substance abuse treatment. (PSI, p.88.) Nonetheless, he consumed alcohol and kept alcohol in his home while on probation. (PSI, p.88.) However, when asked when he last consumed alcohol, Baca reported he had not had alcohol since 2015. (PSI, p.93.) Baca received “Batterer Specific” treatment. (PSI, p.88.) Nonetheless, he battered his wife by head-butting her in the face during an argument. (See R., p.101.) However, Baca asserted he “has never struggled with his anger.” (PSI, p.93.) The PSI concluded that “[b]ased on [Baca]’s non-compliance on supervision during the past year, coupled with his conviction for a violent offense, he does not appear to be a good candidate for community supervision.” (PSI, p.96.)

The district court reviewed the addendum to the PSI. (5/5/2020 Tr., p.13, Ls.17-19.) It considered that Baca had the opportunity to complete a rider and was then given the opportunity of probation, which began successfully. (Tr., p.13, Ls.19-22.) However, the common theme in Baca's history has been "the lack of accountability." (Tr., p.14, Ls.1-5.) The district court noted that Baca blamed his behavior on his wife and represented that his probation had been perfect despite his alcohol violation. (Tr., p.14, Ls.10-17.) The district court found that there was a high risk that Baca would reoffend if he returned to probation. (Tr., p.14, Ls.18-21.) In light of the underlying conduct, the finding that Baca posed a high risk to reoffend if placed on probation, the PSI's recommendation to impose sentence, and Baca's prior rehabilitative opportunities, the district court imposed Baca's underlying sentences. (Tr., p.14, L.18 – p.15, L.2.) The district court did not abuse its discretion by doing so.

Baca argues the district court should not have revoked probation because he did well for most of the probationary period, his violations were "minor," and he does not present a risk to society. (Appellant's brief, pp.5-8.) Baca's "minor" violations demonstrate that he poses a risk to society, given that one violation was based on his commission of a violent battery against another person. Further, Baca's failure to make himself available for supervision demonstrates that he is not amenable to community supervision and instead is in need of a greater level of supervision in a more structured environment, as his probation officer noted. (See R., p.95.) The district court did not abuse its discretion when it concluded that the rehabilitative purpose of probation was not being achieved where Baca continued to engage in concerning behavior—including drinking and battering his wife—despite receiving treatment specifically targeted to address that conduct, and evaded supervision efforts by his probation officer.

CONCLUSION

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

DATED this 31st day of March, 2021.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of March, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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KLJ/dd