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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48152-2020
Plaintiff-Respondent,)	
)	Minidoka County Case No.
v.)	CR34-18-200
)	
SEAN MICHAEL CLARKE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Has Clarke failed to show that the district court abused its sentencing discretion when it revoked Clarke's probation and executed his underlying sentence?

ARGUMENT

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

A. Introduction

The state charged Clarke with possession of hydrocodone, second offense. (R., pp. 37-39.) Clarke pled guilty pursuant to a plea agreement. (R., pp. 45-57.) The district court sentenced Clarke to five years with two years fixed and retained jurisdiction. (R., pp. 58-61.) At the

conclusion of the retained jurisdiction, the district court placed Clarke on probation for three years. (R., pp. 65-67.)

A little over three months after the court placed Clarke on probation, the state filed a motion to revoke probation. (R., pp. 69-88.) The state alleged Clarke violated his probation in several ways, including by engaging in an unauthorized relationship with another felony probationer, testing positive for and admitting to using methamphetamine, being discharged from treatment for non-compliance, absconding from supervision, and failing to make payments towards the cost of supervision. (R., pp. 72-73.) Clarke admitted violating his probation by consuming methamphetamine and failing to successfully complete substance abuse treatment. (R., p. 99.) The district court revoked probation, re-imposed the underlying sentence, and imposed a new four-year period of probation, including as a requirement that Clarke “successfully complete drug court.” (R., pp. 115-17.)

Less than a month later the court issued a bench warrant when Clarke failed to appear for drug court. (R., p. 118.) Clarke was terminated from drug court. (R., pp. 120-22.) The state filed another motion to revoke probation. (R., pp. 132-33.) The probation violation report alleged that he violated by failing to complete drug court, failing to report to his probation/parole officer, moving residence without permission, using methamphetamine, and absconding from supervision. (R., pp. 124-26.) Clarke was arrested a full year after the warrant for his arrest was issued. (R., pp. 144-46.) He admitted each alleged violation, except the allegation that he moved residence without permission which the state withdrew. (R., p. 149.) The district court revoked probation and executed the underlying sentence. (R., pp. 151-52.) Clarke filed a motion under I.C.R. 35(b), which the district court denied. (R., pp. 154-56.)

Clarke filed a timely notice of appeal. (R., pp. 158-59.)

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) (quoting State v. Rose, 144 Idaho 762, 765, 171 P.3d 253, 256 (2007)). Likewise, the decision not to retain jurisdiction is reviewed for an abuse of discretion. State v. Matthews, 124 Idaho 806, 815, 864 P.2d 644, 653 (Ct. App. 1993). 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, 270, 429 P.3d 149, 158 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Clarke Has Shown No Abuse Of The District Court’s Discretion

Clarke argues that the district court abused its discretion by revoking his probation and executing the underlying sentence rather than retaining jurisdiction. “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, 167 Idaho 650, ___, 474 P.3d 1247, 1251 (Ct. App. 2020). “If the sentencing court has sufficient information at the time of sentencing to determine that a suspended sentence and probation would be inappropriate under the factors articulated in I.C. § 19-2521, refusal to retain jurisdiction will not be deemed an abuse of that discretion.” Matthews, 124 Idaho at 815, 864 P.2d at 653. Clarke’s two-time failure on supervised release followed by a year-long period of absconding demonstrated he was not a good candidate for probation and the goals of probation were not being met.

After reviewing the factual history discussed above (Tr., p. 12, L. 19 – p. 16, L. 6), the court acknowledged that the question before it was whether probation was accomplishing rehabilitation and protection of society, and determined that it was “pretty straightforward” that it was not (Tr., p. 16, Ls. 7-10). The court concluded that, even if Clarke was honest when he claimed to have abstained from using drugs during the year that he absconded from supervision, he “didn’t live up to” his responsibilities and failed to show that he “could be rehabilitated by doing the programming.” (Tr., p. 16, Ls. 11-17.) Noting its discretion, the district court revoked probation, imposed the underlying sentence, and declined to commute or modify it. (Tr., p. 16, L. 18 – p. 17, L. 19.) The district court’s determination that probation was not fulfilling its twin function of protecting society while rehabilitating Clarke shows that the district court properly exercised its discretion.

Clarke argues the district abused its discretion because of the possibility that if the court had given him another opportunity on a rider, he might also have had another opportunity at drug court, and might have been successful this time. (Appellant’s brief, p. 4.) He also argues that an abuse of discretion is shown by his claim that, during the year he absconded from supervision and was wanted on the bench warrant, he maintained a job, got married, and did not use narcotics. (Id.) Finally, he claims an abuse of discretion is shown by the fact that he is “scared for his safety” if he is “stuck in a cell with someone else for 20 hours” because he has “been diagnosed with Crohn’s disease,” will frequently “need[] to use the restroom,” and inmates are “very unforgiving.” (Id.; Tr., p. 12, Ls. 13-18.)

Clarke twice violated the terms of his supervised release, within three months the first time, and three weeks the second. The second time, he absconded for more than a year. The hypothetical possibility that he might have been successful if given a third opportunity hardly shows an abuse

of discretion. In addition, Clarke's bare assertion that he avoided additional criminal conduct and drug use while a fugitive—though he could not do so during the brief periods he was supervised—does not show an abuse of discretion. In the first place, having absconded supervision, the court had no way to confirm Clarke's claim that he had not continued to abuse narcotics and abstained from further criminal conduct. But, in the second, the mere fact that he absconded from supervision for more than a year undermines any suggestion that he is rehabilitated and society requires no protection. The act of absconding clearly demonstrates that Clarke was not amenable to supervision and an inappropriate candidate for continuing on probation. Finally, the district court considered Clarke's health condition and related concerns regarding his safety and determined it cannot "override the other sentencing factors here." (Tr., p. 17, Ls. 21-23.) That Clarke feared a potential cell-mate might be angered by the number of times he used the restroom does not show an abuse of discretion.

The district court's conclusion that probation was not protecting the community or rehabilitating Clarke are supported by the record, as is its conclusion that he was not a suitable candidate for probation. Clarke has shown no error in those findings. He has failed to show an abuse of discretion.

CONCLUSION

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

DATED this 5th day of April, 2021.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of April, 2021, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JUSTIN M. CURTIS
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/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

AVW/dd