

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

3-4-2021

### State v. Briggs Respondent's Brief Dckt. 48210

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Briggs Respondent's Brief Dckt. 48210" (2021). *Not Reported*. 7015.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/7015](https://digitalcommons.law.uidaho.edu/not_reported/7015)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

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

KACEY L. JONES  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
E-mail: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48210-2020
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-FE-2015-13884
	)	
CODY ROBERT BRIGGS,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Briggs failed to establish that the district court abused its discretion when it revoked his probation and imposed the underlying sentence?

ARGUMENT

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

A. Introduction

Probation and parole officers conducted a residence check on Briggs. (PSI, p.4.) Briggs was agitated and upset with the home visit. (PSI, p.4.) He provided a saliva sample, which tested positive for methamphetamine. (PSI, p.4.) During a search of the residence, officers found a small

plastic envelope containing a crystal substance which tested positive for methamphetamine. (PSI, pp.4, 84.)

The state charged Briggs with possession of methamphetamine. (R., pp.24-25.) Briggs pleaded guilty. (See R., pp.28-34.) The district court sentenced Briggs to seven years with two years fixed and retained jurisdiction. (R., pp.39-41.) Following the completion of his rider, the district court suspended Briggs' sentence and placed him on probation. (R., pp.44-47.)

The state moved for a probation violation, alleging Briggs violated the terms of his probation by committing a new crime of misdemeanor battery, consuming alcohol on two occasions, and entering an establishment where alcohol is the primary source of income. (R., pp.66-70, 102-03.) Briggs admitted to one allegation that he violated the terms of his probation and the state dismissed the remaining allegations. The district court reinstated Briggs' probation. (R., pp.105-07.)

The state moved for a second probation violation, alleging Briggs failed to maintain employment by losing his job due to alcohol use, consumed alcohol on three separate occasions, and failed to submit to required alcohol testing. (R., pp.122-28.) Briggs admitted to violating his probation by consuming alcohol on three separate occasions and the state dismissed the remaining allegations. (See R., pp.143-44; see also Tr., p.9, L.8 – p.11, L.2.) The district court revoked Briggs' probation and imposed his underlying sentence. (R., pp.145-47; Tr., p.26, Ls.11-14.) Briggs filed a timely notice of appeal. (Aug., pp.1-2.)

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

On appeal, Briggs does not dispute that he violated the terms of his probation; he challenges only the district court’s discretionary decision to revoke probation. (See Appellant’s brief, p.3.) 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 district court did not abuse its discretion when it revoked Briggs' probation and imposed the underlying sentence. Briggs has demonstrated that he poses a risk to society. As his criminal history illustrates, Briggs has substance abuse and anger issues; he has three prior DUIs, one of which was a felony, as well as felony convictions for aggravated assault and attempted strangulation. (PSI, pp.7-8.) Further, his criminal history shows a pattern of failing to comply with court orders; he has misdemeanor convictions for driving without privileges, carrying a concealed weapon without a license, contempt of court, and resisting or obstructing officers, as well as four prior probation violations across his other cases. (PSI, pp.5-8.) While incarcerated, Briggs received a disciplinary report and was placed in administrative segregation several times due to gang affiliation and his potential threat to other inmates. (PSI, p.9.) While in jail, Briggs received at disciplinary sanction for reckless endangerment of others related to his role as a lookout during an aggravated battery. (PSI, p.9.)

Further, Briggs has not taken advantage of his rehabilitative opportunities. Briggs completed a rider in another case prior to his rider in this case. (PSI, p.9.) Briggs completed numerous programs related to anger management and substance abuse during incarceration, his rider, and in the community. (PSI, pp.9, 14; Conf. Ex., pp.18-19.) Nonetheless, Briggs' performance on probation indicates that he is not yet willing or able to comply with its terms. After his release, Briggs provided inaccurate addresses and contact information to probation, failed to make contact with probation for over a month, and instead began drinking upon his release. (See Conf. Ex., pp.7-9.) Briggs moved without providing notice or his new address to his probation officer. (Conf. Ex., pp.12-13.) During a visit, Briggs had a black eye and cut lip and admitting to getting into a physical altercation. (Conf. Ex., p.13.)

The conduct underlying the probation violations demonstrates that Briggs is in need of treatment in a controlled setting to protect society and enable him to succeed in the community. On one occasion, Briggs was stopped by law enforcement on the greenbelt, where he was very intoxicated and harassing women. (Conf. Ex., p.14.) Thereafter, he was given a SCRAM device and tested positive for alcohol; Briggs indicated he had been drinking for the last two days. (Conf. Ex., p.14.) On another occasion during a home visit, Briggs was highly intoxicated. (Conf. Ex., p.15.) He did not have his SCRAM device on him. (Conf. Ex., p.15.) He admitted he lost his job due to drinking but then blamed it on “jews.” (Conf. Ex., p.15.) Briggs admitted to drinking around twenty shots of vodka a day. (Conf. Ex., p.15.) Briggs stated that days earlier he had gone to a restaurant and “had to teach some guys to fight.” (Conf. Ex., p.15.) The probation officer spoke to the manager at the restaurant who said that Briggs and his friends arrived highly intoxicated to the restaurant, which was full of families. (Conf. Ex., p.16.) A fight started over a female and Briggs used racial slurs towards the Hispanic victims involved. (Conf. Ex., p.16.) Briggs threw punches and even tried to kick the manager; it took ten to fifteen officers to get things under control, although no charges were ultimately filed. (Conf. Ex., p.16.)

The district court properly “considered the Toohill factors and the nature of the offense; the character of the offender; any mitigating or aggravating factors; fulfilling the objectives of protecting society and achieving deterrence, rehabilitation or retribution” as well as “the criteria for sentencing under Idaho Code [§] 19-2521.” (Tr., p.25, Ls.17-23.) The district court found that Briggs was “not amenable to supervision at this time based on the fact that [he] ha[d] not abstained from alcohol, [he] ha[d] not completed the requisite treatment and [was] noncompliant when the probation officer tried the SCRAM device.” (Tr., p.26, Ls.5-10.) The district court acknowledged Briggs’ substance abuse issue and expressed concern that the sheer amount of alcohol Briggs was

consuming on a regular basis was of such a high level that it would prevent him from being able to maintain employment and could lead to additional criminal activity. (Tr., p.26, L.19 – p.27, L.1.) The district court found that Briggs posed a risk to the community and that programming in a controlled environment would better address his substance abuse issues and prepare him to successfully manage triggers and continue treatment upon his release. (Tr., p.27, Ls.5-11.) In light of his continued excessive alcohol use and violent behavior, the district court did not abuse its discretion when it revoked Briggs' probation and imposed the underlying sentence.

Briggs argues that the district court failed to exercise reason when it revoked his probation, because probation was achieving its rehabilitative purpose. (Appellant's brief, pp.3-5.) Briggs notes that he successfully completed his rider and took responsibility for his probation violations. (Appellant's brief, pp.4-5.) As discussed above, the district court considered Briggs' performance on probation, including his conduct underlying the probation violations. In light of his past opportunities for programming and treatment and his continued alcohol use and violence in the community, the district court reasonably concluded that probation was not achieving its rehabilitative purpose. Briggs has failed to show that the district court abused its discretion when it revoked his probation.

#### CONCLUSION

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

DATED this 4th day of March, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of March, 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:

EMILY M. JOYCE  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

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

KLJ/dd