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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48232-2020
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-17-6960
)	
ASHLEY MARIE MYERS,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

ISSUE

Has Ashley Marie Myers failed to show that the district court abused its discretion when it revoked her probation and executed her sentence of ten years, with two years fixed, for felony DUI?

ARGUMENT

Myers Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

In March 2017, the state charged Myers with felony DUI, alleging two prior DUI convictions within the past ten years. (R., pp.22-23.) Pursuant to a plea agreement with the state,

Myers pleaded guilty as charged. (R., pp.29-39.) The district court sentenced Myers to ten years, with two years fixed, and placed her on probation for a period of ten years. (R., pp.44-45.)

In January of 2018, the state filed a probation violation report, alleging that Myers violated the terms and conditions of probation in a variety of ways. (R., pp.60-62.) Myers admitted to five of the violations, acknowledging that she had prohibited contacts with another person, possessed drug paraphernalia, consumed alcohol on two occasions, and drove a car without being “properly licensed and insured.” (R., pp.61-62, 70.) The district court revoked probation and retained jurisdiction, placing Myers on a rider. (R., pp.72-73.)

In September of 2018, following the period of retained jurisdiction, the district again placed Myers on probation for a period of ten years. (R., pp.76-81.)

Myers was subsequently arrested in Payette County, in January of 2020, for felony DUI, two counts of misdemeanor battery on an officer, and one count of misdemeanor resisting and obstructing. (R., pp.84, 92-93.) The state moved to revoke Myers’ probation based on the Payette County charges, among other alleged violations. (R., p.86-91.) Myers ultimately pleaded guilty to the Payette County felony DUI charge; thereafter, in this case, she admitted to the probation violation based on that charge. (R., p.117; 6/1/20 Tr., p.4, L17 – p.5, L.16.) Following Myers’ admission, the district court revoked probation and imposed her underlying sentence. (R., pp.122-23; 8/3/2020 Tr., p.16, L.18 – p.19, L.16.) Myers timely appealed. (R., pp.125-26.)

Myers argues the district court abused its discretion “by executing her sentence without retaining jurisdiction.” (Appellant’s brief, p.6.) Review of the record and application of the relevant legal standards shows no abuse of discretion.

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) (quotation marks omitted). 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, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

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

“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. Day, 154 Idaho 649, 650, 301 P.3d 655, 656 (Ct. App. 2013). “Relevant considerations in making this decision are whether the probation is serving the goals of rehabilitation and whether imprisonment is necessary for the protection of society.” State v. Kerr, 115 Idaho 725, 726, 769 P.2d 602, 603 (Ct. App. 1989). “[W]e examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation.” State v. Hoskins, 131 Idaho 670, 672, 962 P.2d 1054, 1056 (Ct. App. 1998).

On appeal, Myers fails to show the district court abused its discretion. To the contrary, the court properly executed Myers’ sentence because Myers’ drinking and driving posed a risk to the community, and all prior attempts at rehabilitation had failed. Myers’ underlying conviction was

felony DUI—her fourth lifetime conviction for driving under the influence.¹ (PSI, pp.4-6; 6/1/20 Tr., p.6, Ls.9-11.) She has twice violated probation in this case, and almost all the admitted violations involve drinking and driving. (R., pp.61-62, 70, 117.) Myers’ most recent probation violation was based on her latest conviction out of Payette County, also for felony DUI, where Myers “hit a car being driven by another person” and was “extremely combative with the officers” who responded to the scene. (8/3/20 Tr., p.17, Ls.11-17.) Lots of things had been tried to address Myers’ penchant for drunk driving; indeed, Myers accrued her second felony DUI despite having “a mix of probation and programs” under her belt, as well as “sober structured time” during her rider in this case. (8/3/20 Tr., p.17, Ls.2-11; see PSI, pp.11-12.)

The district court therefore sensibly concluded that Myers’ “really cannot drink at all,” and needed more alcohol abuse treatment and “mental health treatment” before she could effectively address these issues. (8/3/20 Tr., p.17, Ls.17-24.) Given Myers’ prior history and performance in this case, the court was likewise well within its discretion to conclude that probation, or even another rider, was insufficient to get her there: the district court found “the problem we have gotten to is it doesn’t seem safe to deal with this in the community,” at least until Myers accrued “more time sober” and had “a better chance ... to deal with it better.” (8/3/20 Tr., p.17, L.24 – p.18, L.4.) Myers fails to show this was an abuse of discretion.

On appeal Myers argues that “the district court did not exercise reason, and thus abused its discretion, by executing her sentence without retaining jurisdiction.” (Appellant’s brief, p.6.) Her claim is that district court should have realized Myers “could be successful in the community,”

¹ The PSI in the record was prepared before Myers’ 2020 felony DUI and therefore doesn’t show that conviction in her criminal history. (See PSI, pp.4-6; 6/1/20 Tr., p.6, Ls.9-11.) In addition to the four convictions for driving under the influence, Myers’ reckless driving conviction was originally charged as a DUI, based on Myers driving with a BAC of “.088/.086.” (PSI, p.6.)

while properly supervised, “if she receives the treatment and programming she needs to address her substance abuse issues.” (Id.)

But this ignores that the district court was well aware of Myers’ struggles with substance abuse. It understood how important treatment is. Those topics were essentially all the court discussed at the disposition hearing. (See 8/3/20 Tr., p.16, L.18 – p.20, L.2.) And Idaho’s appellate courts do “not presume the district court did not consider the information before it, as the district court said it did,” nor will they “reweigh the evidence on appeal from a discretionary sentencing decision.” State v. Deboer, Idaho Court of Appeals Docket No. 47840, *5 (filed January 28, 2021 (opinion not yet final), citing State v. Windom, 150 Idaho 873, 879, 253 P.3d 310, 316 (2011)). This Court should not do so here.

In any event, the district court sensibly disagreed that Myers “could be successful in the community.” (Appellant’s brief, p.6.) Far from “not exercis[ing] reason” on that question (see Appellant’s brief, p.6), the court quite reasonably assessed the record in front of it, and concluded that Myers was demonstrably incapable of solving these problems on her own, on probation, or on a rider:

This is a very significant violation of a probation that had as conditions of that probation that you couldn’t purchase, possess or consume alcohol. And then you couple it with the kicking the officers and all of that stuff, I think things are very out of control. And I just don’t feel like we have the capability to manage that safely in the public. Whereas, I think if you got more programming and more sobriety, you might be able to move along farther.

...

So I’m going to revoke probation and impose sentence, but you’ve got lots of credit for time served. And I’m going to recommend that you receive additional substance abuse counseling and treatment, and I’m also going to recommend in the judgment that you receive mental health counseling and treatment. Because I think if you do both of those together and you have some more time sober, you should be in a better[,] stronger position when you get out.

(Tr., p.18, Ls.5 – p.19, L.16.)

The record in this case affirms that, despite numerous attempts at treatment and non-prison supervision, Myers still “violated the key conditions” related to drinking and driving, which are “designed to protect people.” (8/3/20 Tr., p.19, Ls.2-3; R., pp.61-62, 70, 117.) As such, the district court was right to think it would be unsafe to prematurely release Myers without “some more time sober” in prison. (8/3/20 Tr., p.19, Ls.7-16.) Because probation was not accomplishing its goals, nor had Myers’ period of retained jurisdiction made any durable impact on her drinking and driving, this was a reasonable conclusion.

Rehabilitation and community protection are the touchstones of a probation revocation decision. See Kerr, 115 Idaho at 726, 769 P.2d at 603. And despite many attempts at rehabilitation—through probation, treatment, and a rider—Myers’ substance abuse issues remained unsolved, and the community remained at risk. The district court was therefore well within its discretion to conclude that nothing short of incarceration, and the non-negotiable treatment on offer there, could effectively rehabilitate Myers while protecting the public. (Appellant’s brief, p.3.) The court did not abuse its discretion by revoking probation and executing the sentence.

CONCLUSION

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

DATED this 28th day of April, 2021.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th 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:

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/s/ Kale D. Gans
KALE D. GANS
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KDG/dd