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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 48241-2020
)	
v.)	IDAHO COUNTY NO. CR-2014-56791
)	
CORY LYNN HAWKER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Cory Hawker pled guilty to aggravated battery. He received a unified sentence of nine years, with three years fixed, and the court retained jurisdiction. After a period of retained jurisdiction, the court placed him on probation for five years. After a probation violation, the district court continued Mr. Hawker on probation. After another probation violation, the district court revoked Mr. Hawker's probation. On appeal, Mr. Hawker contends that the district court abused its discretion in revoking his probation.

Statement of the Facts & Course of Proceedings

On the evening on March 16, 2014, a man contacted law enforcement regarding a battery from which the man suffered lacerations requiring stitches, and nasal fractures. (Presentence Investigation Report (*hereinafter*, PSI),¹ p.3.) Law enforcement responded and arrested Cory Hawker, who had been identified as the assailant. (PSI, p.3.) Based on these facts, Mr. Hawker was charged with aggravated battery. (R., pp.36-37.) Pursuant to a plea agreement, Mr. Hawker pled guilty as charged.² (R., pp.92-108.)

The district court sentenced Mr. Hawker to a unified term of nine years, with three years fixed, and retained jurisdiction. (R., pp.127-30.) After a period of retained jurisdiction, the district court placed Mr. Hawker on probation for five years. (R., pp.137-41.)

Approximately three years later, the State filed a petition for probation violation. (R., pp.166-72.) Mr. Hawker was alleged to have violated his probation by failing to pay his costs of supervision, being charged with malicious injury to property, and by using alcohol, marijuana, and a muscle relaxant. (R., p.169.) Mr. Hawker admitted to violating some of the terms and conditions of his probation. (R., p.184.) The district court sentenced Mr. Hawker to fifteen days in jail but placed him back on probation. (R., pp.184-88.) One year later, Mr. Hawker was ordered to serve two days of discretionary jail time for consuming alcohol and marijuana. (R., p.193.)

The following year, two months shy of the completion of his five-year probationary term, the State filed a report of probation violation alleging that Mr. Hawker was charged with battery

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

² The plea agreement also required Mr. Hawker to plead guilty to two counts of misdemeanor battery in Idaho County case number CR-2014-57293. (R., pp.93-94.)

with the intent to commit a serious felony,³ consumed an alcoholic beverage and marijuana, failed to meet with and call his probation officer, and failed to attend treatment. (R., pp.198-217.)

Mr. Hawker admitted to violating some of the terms and conditions of his probation. (R., p.221.) After a hearing on violations 1, 2, 6, 8, and 9, Mr. Hawker was found to have violated additional terms and conditions of his probation. (7/6/20 Tr., p.7, Ls.6-8; R., pp.228-31.) At the disposition hearing, the district court revoked Mr. Hawker's probation. (7/6/20 Tr., p.47, L.21 – p.48, L.7; R., pp.228-31.) Mr. Hawker filed a Notice of Appeal timely from the Order Revoking Probation. (R., pp.232-35.) Mr. Hawker contends that the district court abused its discretion by revoking his probation.

ISSUE

Did the district court abuse its discretion when it revoked Mr. Hawker's probation?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Hawker's Probation

Mr. Hawker asserts that the district court abused its discretion when it revoked his probation and executed his original sentence of nine years, with three years fixed. He asserts that his probation violations did not justify revoking probation, especially in light of the goals of rehabilitation and the fact that the protection of society could be best served by his continued supervision under the probation department.

There are generally two questions that must be determined by the district court in addressing allegations of probation violations: first, the court must determine whether the

³ Mr. Hawker was charged with aggravated battery and battery with intent to commit a serious felony in Idaho County case number CR25-20-812. (R., pp.201, 221.)

defendant actually violated any terms and conditions of his probation; and second, if a violation has been found, the trial court must then decide the appropriate remedy for the violation. *State v. Sanchez*, 149 Idaho 102, 105 (2009). “The determination of whether a probation violation has been established is separate from the decision of what consequence, if any, to impose for the violation.” *Id.* (quoting *State v. Thompson*, 140 Idaho 796, 799 (2004)). Once a probation violation has been found, the district court must determine whether it is of such seriousness as to warrant revoking probation. *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). However, probation may not be revoked arbitrarily. *State v. Adams*, 115 Idaho 1053, 1055 (Ct. App. 1989). The district court must decide whether probation is achieving the goal of rehabilitation and whether probation is consistent with the protection of society. *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001). If a knowing and intentional probation violation has been proved, a district court’s decision to revoke probation will be reviewed for an abuse of discretion. I.C. § 20-222; *Leach*, 135 Idaho at 529.

In reviewing a trial court’s decision for an abuse of discretion, the relevant inquiry regards four factors:

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.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018).

Only if the trial court determines that alternatives to imprisonment are not adequate in a particular situation to meet the state’s legitimate interest in punishment, deterrence, or the protection of society, may the court imprison a probationer who has made sufficient, genuine efforts to obey the terms of the probation order. *State v. Lafferty*, 125 Idaho 378, 382 (Ct. App.

1994). Mr. Hawker asserts that the district court abused its discretion by failing to reach its decision to revoke his probation by the exercise of reason.

Here, Mr. Hawker showed good insight into his addiction/mental health issues and his criminal thinking. (7/20/21 Tr., p.43, L.14 – p.44, L.6.) Mr. Hawker can be rehabilitated and be a productive member of society. Mr. Hawker asserts that the district court abused its discretion in finding that his probation violations justified revocation in light of his rehabilitative potential and his insight into the issues that initially brought him before the district court.

As he told the district court at his probation violation disposition hearing:

When it comes to accountability on this, Your Honor, my past, I am not perfect. I'm a lot different than what I used to be. I made mistakes, and I'm going to continue to make mistakes. I'm not perfect. I never will be. But I'll give it my best. What I've learned from all this, since I've had time to think about this, over the last year it has been pretty rough for me. Mental issues, friends dying, family dying, situation with my mother brought it all to light. I've had some time to think about the last 30 some odd days. I want to improve my mental health. I want to find the right medication to take. As my mental status changes as I get older, I've had nothing but good come from my probation officers. They've always been kind with me, supportive, and I appreciate that. The State has always been good to me, and I want to give back. I want to be a good person. I want to continue to stay a good person. I just need some help, sir, and that's all.

(7/6/20 Tr., p.43, L.14 – p.44, L.6.) Mr. Hawker, through counsel, asked the court to consider placing him on a rider, and then sentencing him to a specialty court. (7/6/20 Tr., p.34, L.20 – p.36, L.25.) Mr. Hawker last went on a rider over two years ago. (7/6/20 Tr., p.35, L.20 – p.36, L.4.) Additional treatment is needed to assist Mr. Hawker in maintaining his sobriety and managing his mental health conditions. (7/6/20 Tr., p.37, Ls.14-18; p.41, L.24 – p.42, L.2; p.43, L.19 – p.44, L.64.) Mr. Hawker asked the court for help managing his mental health conditions and demonstrated that he would have benefitted from being sentenced to a retained jurisdiction. (7/6/20 Tr., p.44, Ls.4-6.)

In light of all of the mitigating evidence that was presented to the district court that demonstrates Mr. Hawker's significant rehabilitative potential, the district court abused its discretion when revoked Mr. Hawker's probation.

CONCLUSION

Mr. Hawker respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new disposition hearing.

DATED this 29th day of April, 2021.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

SJC/eas