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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 48253-2020
)	
v.)	BONNEVILLE COUNTY NO.
)	CR10-19-8407
)	
AUSTIN SAMUEL BYRON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Austin Byron was on probation for domestic violence and participating in domestic violence court (“DV court”) in this case, when he was charged with two separate offenses in two separate cases: violating a no contact order and malicious injury to property. Because of these two offenses, he was suspended from DV court in this case. His suspension from DV court triggered a probation violation. After an evidentiary hearing, the district court found Mr. Byron violated his probation by not completing DV court and revoked his probation. On appeal, Mr. Byron argues the district court abused its discretion in revoking his probation.

Statement of the Facts & Course of Proceedings

In November 2019, Mr. Byron pleaded guilty, pursuant to a plea agreement, to felony domestic violence. (R., p.93.) In February 2020, the district court sentenced Mr. Byron to ten years, with two years determinate, suspended the sentence, and placed Mr. Byron on probation. (R., pp.111-12.) As a condition of his probation, Mr. Byron was required to participate in and successfully complete DV court. (R., pp.111, 113.) Less than three months later, an agent's warrant was issued because Mr. Byron was allegedly "in possession/consuming alcohol." (R., p.126.) The next day, an order was issued suspending¹ Mr. Byron from DV court. (R., p.139.) Seven days later, a Motion to Find Probation Violation was filed (R., p.140), alleging Mr. Byron violated one term of his probation: Special Condition B – "participate in and successfully complete Domestic Violence Court." (R., p.142.) The Report of Probation Violation lists three things Mr. Byron allegedly did: violated a no contact order on March 3, 2020, committed the offense of Malicious Injury to Property² on March 19, 2020, and possessed two liquor bottles on March 9, 2020. (R., p.142.)

Following a contested evidentiary hearing³, the district court found that Mr. Byron did not successfully complete DV court. (Tr., p.73, Ls.17-21.) The district court also determined that the DV court did not abuse its discretion in suspending him from DV court. (Tr., p.75, Ls.11-12.)

¹ The order states that Mr. Byron was "suspended" from DV court (R., p.139), and the Report of Probation Violation states that Mr. Byron was "suspended" from DV court (R., p.172); however the State and the district court referred to Mr. Byron's being "terminated" or his "termination" from DV court (*see, e.g.*, Tr., p.5, Ls.18-20, p.74, Ls.2-3), and defense counsel referred to Mr. Byron "being kicked out of drug [sic] court." (Tr., p.68, L.24.) For the sake of clarity, all references regarding Mr. Byron's status with DV court will be "suspension."

² The malicious injury to property involved damage to a hotel room in which Mr. Byron was staying while on probation. (R., p.142; Tr., p.9, Ls.6-7, p.23, Ls.8-9.)

³ At the evidentiary hearing, an audio recording was played in open court. A Motion to Augment Record has been filed contemporaneously with this brief along with the Declaration of Emily M. Joyce and two CDs containing the audio recording of the evidentiary and disposition hearing, which contains the recording played in open court.

In reaching this conclusion, the district court found that there was not adequate evidence that Mr. Byron was in possession of two bottles of liquor. (Tr., p.74, Ls.7-9.) However, it did find, by a preponderance of evidence, that Mr. Byron violated the no contact order (Tr., p.74, Ls.19-22) and committed the offense of malicious injury to property. (Tr., p.74, L.25 – p.75, L.7.) The district court then found Mr. Byron violated his probation. (Tr., p.75, Ls.12-13.)

Mr. Byron argued that he should not have been terminated from DV court or have probation revoked because he had just begun DV court, no intermediate sanctions had yet been imposed and those would be more appropriate than termination, and that he was capable of success under supervision. (Tr., p.79, L.16 – p.80, L.11.) In addition, Mr. Byron testified that while he has had a few “slipups,” his probation should not be revoked because had started a new medication, which stabilized his mood, he worked two jobs, earned a decent income, and has been taking steps to become successful in the community. (Tr., p.80, L.21 – p.81, L.25.) The district court commended Mr. Byron for changing his medication (Tr., p.82, Ls.9-12), but nonetheless revoked his probation and executed his underlying sentence of ten years, with two years determinate, although it also retained jurisdiction. (Tr., p.83, Ls.5-24; R., p.167.) Mr. Byron timely filed a notice of appeal from the order revoking his probation. (R., p.170.)

ISSUE

Whether the district court abused its discretion when it revoked Mr. Byron’s probation and executed his underlying sentence.

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Byron’s Probation And Executed His Underlying Sentence Of Ten Years, With Two Years Determinate

The district court abused its discretion when it revoked Mr. Byron’s probation because

probation was achieving its rehabilitative objective and providing adequate protection to society. The district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to review a probation revocation decision. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines "whether the defendant violated the terms of his probation." *Id.* Second, "[i]f it is determined that the defendant has in fact violated the terms of his probation," the Court examines "what should be the consequences of that violation." *Id.* The finding of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

The sole probation violation alleged and found by the district court was failure to successfully complete DV court. (R., p.142.) The report of violation listed the three allegations in support of Mr. Byron's suspension from DV court: Mr. Byron (1) violated a no contact order, (2) was charged with malicious injury to property, and (3) was in possession of two bottles of liquor. (R., p.142.) At the evidentiary hearing, the district court found by a preponderance of the evidence that Mr. Byron committed new offenses (Tr., p.74, Ls.19-22, p.74, L.25 – p.75, L.7) and therefore he was properly suspended from DV court. (Tr., p.75, Ls.8-12.) Because he was appropriately suspended from DV court, the district court found Mr. Byron violated of his probation. (Tr., p.75, Ls.8-13.) On appeal, Mr. Byron does not challenge these findings.

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, this revocation may not be arbitrarily made. *State v. Adams*, 115 Idaho 1053, 1055 (Ct. App. 1989). If a knowing and intentional probation violation has been proven, a district court's decision to revoke probation will be reviewed for an abuse of discretion. I.C. § 20-222; I.C.R. 33(f); *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001). In determining if

such an abuse occurred, appellate review centers on 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. Bodenbach*, 165 Idaho 577, 591 (2019).

“The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision.” *State v. Mummert*, 98 Idaho 452, 454 (1977). The district court must decide whether probation is achieving the goal of rehabilitation and whether probation is consistent with the protection of society. *Leach*, 135 Idaho at 529. In determining whether to revoke probation the court may consider the defendant’s conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

Mr. Byron argues the district court did not exercise reason in determining that revocation was appropriate because probation was serving its rehabilitative objective. At age [REDACTED] Mr. Byron has struggled with mental health and substance abuse. (Conf. Doc., pp.3, 8.) Mr. Byron is aware of his issues, wants help, and is willing to participate in treatment. (Conf. Doc., p.2; Tr., p.80, L.9.) He has had suicidal ideations in the past, and is remorseful and takes complete responsibility for his actions. (Conf. Doc., p.7.) His physiological assessment indicated that his behavior aligns with borderline personality disorder. (Conf. Doc. Rec., p.10.) He has urges of self-harm (Conf. Doc. Rec., pp.10-11), he was physically and emotionally abused as a child (Conf. Doc. Rec., p.11), and he has issues with volatility with others. (Conf. Doc. Rec., p.11.) Yet, he is open and motivated for treatment. (Conf. Doc. Rec., pp.12-14.) He has obtained his GED, (Conf. Doc. Rec., pp.8-9), he was employed at the time of the probation violation (Conf. Doc. Re., p.9), and he wants to pursue a degree in Psychotherapy. (Conf. Doc. Rec., p.8.)

Mr. Byron was relatively new to probation when his mental health and substance abuse got the better of him. He had just started a new medication, which stabilized his mental health, and had an appointment to discuss his medication and mental health. (Tr., p.81, Ls.3-6, 9-14.) He was working two jobs and had begun to take steps to become successful in the community, (Tr., p.81, Ls.7-.25), but like many with mental health and substance abuse issues, he backslid. In fact, less than a week before the events that triggered Mr. Byron’s probation violation, the district court was trying to determine whether Mr. Byron was in the middle of a “mental health cycle.” (Ex. R., p.18.)

Mr. Byron’s history of mental health issues, substance abuse issues, remorse and acceptance of responsibility, employment, and active involvement in obtaining new medication for his mental health show that he has the tools to succeed in the community under proper control and supervision. In light of these facts, Mr. Byron maintains the district court did not exercise reason, and therefore abused its discretion, by revoking his probation. The district court should have reinstated his probation.

CONCLUSION

Mr. Byron respectfully requests that this Court reverse the district court’s order revoking his probation and remand his case to the district court with an instruction that he be returned to probation.

DATED this 27th day of January, 2021.

/s/ Emily M. Joyce
EMILY M. JOYCE
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 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

EMJ/eas