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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	Nos. 48387-2020, 48388-2020,
)	48389-2020 & 48390-2020
Plaintiff-Respondent,)	
)	Ada County Case Nos.
v.)	CR-FE-2016-4953, CR-FE-2016-4954,
)	CR01-17-8426 & CR01-20-29011
DEREK DUANE BEESE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

ISSUES

1. Has Beese failed to establish that the district court abused its discretion by revoking his probation and executing his underlying sentences?
2. Has Beese failed to show that the district court abused its discretion sentencing him to five years, with two years fixed, for felony eluding a peace officer?

STATEMENT OF THE CASE

Derek Duane Beese appeals from the district court's orders revoking his probations and imposing his sentences in two 2016 cases and a 2017 case. He also appeals his sentence of five years, with two years fixed, for his 2020 felony eluding conviction.

On September 30, 2016, Beese entered guilty pleas in two separate cases: grand theft (48387 R., pp.41-42), and possession of a controlled substance (methamphetamine) (48388 R., pp.42-43). The district court sentenced Beese to eight years, with two years fixed, and placed him in the retained jurisdiction ("rider") program in the grand theft case. (48387 R., pp.64-67.) For possession of methamphetamine, the court sentenced Beese to six years, with two years fixed, with a concurrent rider. (48388 R., pp.63-66.) After completing his rider, the court placed Beese on probation for five years in each case. (48387 R., pp.70-74; 48388 R., pp.76-80.)

Before Beese was placed on probation in his 2016 cases, on March 13, 2017, the state filed a Complaint charging him with grand theft by receiving stolen property (a .45 caliber pistol) in February 2016, which occurred before he committed his 2016 offenses. (48389 R., pp.9-10.) Beese pled guilty to the 2017 grand theft charge, and was sentenced to five years, with two years fixed, and placed on probation for four years. (48389 R., pp.42, 52-58.)

In July 2020, the state filed a Complaint against Beese, charging him with felony eluding a peace officer and possession of drug paraphernalia. (48390 R., pp.7-8.) Based on the eluding charge and other allegations, the district court ordered bench warrants for probation violations in the 2016 and 2017 cases. (48387 R., pp.104-106; 48388 R., p.105; 48389 R., pp.59-61.) Beese admitted two allegations in each of those three cases – committing the crime of felony eluding and absconding from supervision. (48387 R., p.123; 48388 R., p.125; 48389 R., p.75.) In the 2020

case, pursuant to a plea agreement, Beese pled guilty to felony eluding a peace officer and the paraphernalia charge was dismissed. (48390 R., pp.31-32, 42-43.)

The cases were consolidated for sentencing and disposition. (48387 R., pp.125-126.) At the joint hearing, the district court ordered Beese's probations in his 2016 and 2017 cases revoked, and imposed the original sentences in each case. (48387 R., pp.127-129; 48388 R., pp.126-128; 48389 R., pp.78-81.) In the 2020 felony eluding case, the court sentenced Beese to five years, with two years fixed, concurrent with the sentences in the three other cases. (48390 R., pp.46-49.) Beese filed a Rule 35 motion for reduction of sentence in all four cases, which were denied.¹ (48387 R., pp.132-133, 142-144; 48388 R., pp.131-132, 141-143; 48389 R., pp.84-85, 94-96; 48390 R., pp.52-53.) Beese filed a timely notice of appeal in all four cases. (48387 R., pp.134-136; 48388 R., pp.133-135; 48389 R., pp.86-88; 48390 R., pp.54-56.)

ARGUMENT

I.

Beese Has Failed To Show That The District Court Abused Its Discretion By Revoking His Probations And Imposing His Sentences In The 2016 And 2017 Cases

A. Introduction

Upon finding that Beese willfully violated the terms of his probations, the district court revoked his three probations and executed his underlying sentences. (48387 R., pp.127-129; 48388 R., pp.126-128; 48389 R., pp.78-81; Tr., p.26, Ls.11-21.) On appeal, Beese argues that the district court "abused its discretion when it revoked [his] probation and executed his underlying sentences"

¹ The record on appeal does not include an order on Beese's Rule 35 motion in his 2020 case. In the absence of an order granting such a motion, the state assumes it was denied.

in the 2016 and 2017 cases. (Appellant’s brief, p.6 (capitalization modified).) Beese has failed to establish an abuse of discretion.

B. Standard Of Review

“‘[T]he decision whether to revoke a defendant’s probation for a violation is within the discretion of the district court.’” State v. Garner, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017) (quoting State v. Knutsen, 138 Idaho 918, 923, 71 P.3d 1065, 1070 (Ct. App. 2003)). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and is consistent with the protection of society. State v. Cornelison, 154 Idaho 793, 797, 302 P.3d 1066, 1070 (Ct. App. 2013). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. Id. at 798, 302 P.3d at 1071 (citing State v. Beckett, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992)).

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. The District Court Did Not Abuse Its Discretion By Revoking Beese’s Probations

On appeal, Beese does not challenge the fact that he violated probation in his 2016 and 2017 cases. (Appellant’s brief, p.6.) Instead, he argues that the court abused its discretion by revoking his probations and imposing his sentences in those cases.

In 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, 454-455, 566 P.2d 1110, 1112-1113 (1977). Contrary to Beese's assertions on appeal, the record shows the district court did not abuse its discretion in revoking his probations and imposing his sentences.

The underlying facts of Beese's 2016 and 2017 convictions warrant review. According to the 2016 Presentence Report ("PSI")², in the first case, the victim "reported that while stopped in traffic in Ada County[,] Derek Beese, this defendant, and two other males approached him. The defendant 'entered his [the victim's] vehicle and forced him to pull into the Dairy Queen' parking lot nearby. 'Derek demanded two AR15's or \$2200.00. When Drew refused either[,] Derek took his cell phone from his hand and his tool box from the truck. Derek made threatening statements and [fled]. [The victim] drove back home to Garden City and had his dad call Police.'" (PSI, p.3.) Beese pled guilty to an amended charge of grand theft (amended from robbery). (48387 R., pp.13-14, 64-67.)

In the second case, Beese was contacted by Boise Police officers regarding a domestic violence call. (PSI, p.3.) According to the Presentence Report, Beese's girlfriend at the time "told

² The 2016 PSI is found in the computer file labeled "Appeal Confidential Exhibits 1-7-2021 10.32.10" (etc.).

officers the defendant physically battered her. Police spoke with [her], and then when attempting to question [Beese], he resisted. In a search incident to arrest[,] police found drugs and paraphernalia on [his] person.” (Id.) Beese was only charged with, and convicted of, possession of a controlled substance (methamphetamine). (48388 R., pp.12-13, 63-66.)

In 2017, Beese was convicted of grand theft by receiving, retaining, obtaining control over, and/or possession of stolen property – a Ruger .45 pistol – knowing it was stolen, or under circumstances reasonably leading to such conclusion. (48389 R., pp.9-10.) While on probation in all three cases, in 2020, Beese committed the crime of felony eluding a peace officer after he operated

a white Dodge Ram, at or about Ten Mile Road to Interstate 84, and willfully fled and/or eluded a pursuing police vehicle after being given a visual and/or audible signals to stop, and in doing so traveled in excess of 30 miles per hour above the posted speed limit and/or drove his vehicle in a manner as to endanger or be likely to endanger the property of another or the person of another, to-wit: by driving approximately 80-100 miles per hour in a 50 mile per hour zone and/or by driving at a high rate of speed while running stop signs, weaving in traffic, nearly colliding with other motorists, and by driving off the road into a construction area.”

(48390 R., p.20.)

Beese’s continued criminal conduct, after committing four felonies and being given the benefit of a rider in his 2016 cases and probation in his 2016 and 2017 cases, shows he was not a proper candidate for continued probation. Both the Presentence Investigator and Beese’s probation officer came to the same conclusion. (48387 R., p.115; 48388 R., p.86; 48389 R., p.69; File Review PSI, p.6.³) The prosecutor explained that Beese was not suitable for probation because he “failed to report to his probation officer at least on three occasions, and then moved into absconding status.” (Tr., p.19, Ls.5-11.)

³ The File Review Presentence Investigation Report (“File Review PSI”) is located in the computer file labeled “Appeal Confidential Exhibits 1-7-2021 10.34.1” (etc.).

The district court noted that Beese had been on probation since August 2017, and had served riders in the two 2016 cases. (Tr., p.23, Ls.19-25.) The court was well aware that Beese's conduct jeopardized public safety, telling him:

[Y]ou made this really awful decision to try to run from police, presumably to avoid being arrested on [probation violation] warrants. You drove dangerously, hitting speeds in the ballpark of 100 miles an hour. You provoked an extended police chase that ended after police had to deploy a spike strip which destroyed one of your tires, and you wind up driving off the road, into a canal. ...

So certainly, this was a dangerous episode that placed people at risk, and it can't be written off, I guess, any more to some sort of lack of judgment that is associated with youth. You're [REDACTED]. . . . You don't have that excuse or way of explaining away your behavior, and while the fact that there were periods of success on probation is worth something, and so is the fact that, like most people, you have some good qualities that go with some not-so-good qualities, it's difficult to rationalize this incident as anything other than an extreme failure to do what is expected of you as a probationer and simply as a citizen.

(Tr., p.24, L.4 – p.25, L.5.)

Beese's dangerous criminal conduct leading to his felony eluding conviction, and his refusal to abide by the conditions of probation (e.g., absconding from supervision), demonstrate his failure to rehabilitate and that he is a continued risk to society. "If the trial judge reasonably concludes from the defendant's conduct that probation is not achieving its rehabilitative purpose, probation may be revoked." State v. Peterson, 123 Idaho 49, 50-51, 844 P.2d 31, 32-33 (Ct. App. 1992) (citation omitted); see Idaho Code § 20-222 (authorizing the revocation of probation at any time if the probationer violates any condition of the probation). Probation is not meeting the objective of rehabilitation and is not providing adequate protection for society where the defendant absconds from probation. See Chavez, 134 Idaho at 312-13, 1 P.3d at 813-14 (holding the district court acted within its discretion when it revoked probation because the probationer absconded probation). Considering Beese's felony eluding conduct and his absconding from supervision, probation was plainly not achieving its rehabilitative purpose for him. Beese has failed to

demonstrate that the district court abused its discretion by revoking his probations and imposing his sentences.

Even though, as Beese points out, NICI's Addendum to the Presentence Report had some positive things to say about his potential for success on probation (see Appellant's brief, pp.7-8; APSI, pp.6-8⁴), the fact that he *subsequently* tried to elude law enforcement in the dangerous manner he chose, and absconded from supervision, shows he was not a proper candidate for continued probation. As commendable as Beese's reported desire is to retain sobriety, work full time, marry his fiancée, stay in contact with a probation officer, and engage in an after-care program, those do not overcome the primary consideration of insuring that probation is meeting the objective of rehabilitation while also providing adequate protection for society. See Upton, 127 Idaho at 275, 899 P.2d at 985. Beese has failed to show that the district court abused its discretion in revoking the probations, and imposing the sentences, in his 2016 and 2017 cases.

II.

Beese Has Failed To Show That The District Court Abused Its Discretion By Sentencing Him To Five Years, With Two Years Fixed, For Felony Eluding A Peace Officer

A. Introduction

In his 2020 case, and pursuant to a plea agreement, Beese pled guilty to felony eluding a peace officer and the paraphernalia charge was dismissed. (48390 R., pp.31-32, 42-43.) The district court sentenced Beese to five years, with two years fixed. (48390 R., pp.46-49.)

On appeal, Beese argues that the district court abused its sentencing discretion because it "should have sentenced him to probation in light of the mitigating factors, including his work history, remorse for his actions, and support in the community." (Appellant's brief, p.10.) Beese

⁴ The Addendum to the Presentence Investigation ("APSI") is located in the computer file labeled "Appeal Supplemental Confidential Exhibits.pdf."

has failed to show that the district court abused its discretion by sentencing him to five years, with two years fixed, for felony eluding a peace officer.

B. Standard Of Review

“Appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and, thus, a clear abuse of discretion.” State v. Schiermeier, 165 Idaho 447, 451, 447 P.3d 895, 899 (2019) (internal quotations and citations omitted). “A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case.” Id. at 454, 447 P.3d at 902 (internal quotation omitted). “A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion.” Id. “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2019). There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005).

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

The record shows that the district court perceived its discretion, employed the correct legal standards to the issue before it, and acted reasonably within the scope of its discretion.

The sentence imposed is within the statutory limits of I.C. § 49-1404(2). At the sentencing hearing, the district court said it had read the pre-sentence report, and acknowledged the sentencing criteria under I.C. § 19-2521 and the four sentencing factors (see State v. Toohill, 103 Idaho 565,

568, 650 P.2d 707, 710 (Ct. App. 1982)). (Tr., p.25, L.19 – p.26, L.8.) The facts underlying Beese’s attempt to elude a Meridian Police Officer show a disregard for the most important sentencing consideration – the public’s safety.

Officer Jaro Villasano began following Beese’s Dodge Ram truck in response to a domestic dispute which led to the confirmation that Beese had three outstanding warrants. (File Review PSI, pp.14-15.) The officer’s probable cause affidavit explained the latter part of his pursuit of Beese:

I attempted to conduct a traffic stop by activating my overhead emergency lights and sirens. The Dodge Ram continued westbound Cherry LN, from Ten Mile Rd, at approximately 60 MPH, weaving through traffic. The vehicle failed to yield for approximately 20 minutes, failing to stop at all stop signs and traffic signals (Red Light), reaching speeds of over 100 MPH on posted 55MPH roads.

[Beese] stopped at one point (west bound I-84/ Exit 32), dropping off passenger Karolee Downs Derek continued driving west bound 1-84 from exit 31. In [an] attempt to evade Police, Derek drove his Dodge Ram off the road and into a canal where he was apprehended after failing to obey commands several times and prolonging the arrest.

(File Review PSI, p.15; see id., pp.21-23, 29-31 (photos of Beese and his vehicle following the incident).)

As described by the district court, Beese drove “in the ballpark of 100 miles an hour” during “an extended police chase that ended after police had to deploy a spike strip which destroyed one of [his] tires, and [he] [wound] up driving off the road, into a canal.” (Tr., p.24, Ls.10-14.) The court summarized, “[s]o certainly, this was a dangerous episode that placed people at risk[.]” (Tr., p.24, Ls.17-20.) The court said that the “eluding incident might warrant an imposed prison sentence even if [Beese] didn’t have all the prior felonies that had [him] on probation at the time.” (Tr., p.25, Ls.8-11.) The court explained that “protection-of-the-community factor, looms large in a case like this where this dangerous behavior happened and it happened to avoid . . . getting picked

up on probation violation warrants, and it's really unclear why [the court] should trust that the same sort of thing wouldn't happen again in a similar circumstance, and regardless, th[e] incident being so dangerous warrants a meaningful punishment in the first instance.” (Tr., p.25, L.24 – p.26, L.8.)

Beese has a comparatively significant criminal history comprised of four felony convictions (currently), and several misdemeanors, including two convictions for domestic violence – violation of a protective order. (PSI, pp.4-6.). The 2020 File Review PSI explained that the 19-2524 evaluations were waived, and because a full presentence interview was not conducted, the Level of Service Inventory-Revised (“LSI-R”) was not completed. (Full Review PSI, p.1.) However, Beese’s 2016 Presentence Report stated that his LSI-R assessment showed he was a moderate risk to reoffend, and that he was diagnosed as having a mild stimulant use disorder (amphetamine type), and a mild alcohol use disorder. (PSI, pp.12-13.) Beese’s GAIN-I assessment “revealed no mental health symptoms . . . and no need . . . for further mental health evaluation.” (Id., p.14.) In short, it does not appear that Beese’s criminality can be attributed to his mental health or substance abuse issues – nor does he contend as much.

Beese argues that the mitigating factors – work history, remorse, and community support – favor a probation sentence. (Appellant’s brief, pp. 9-12.) Even assuming Beese has good work prospects based on his work history, remorse for his crime, and the support of the community, those mitigating factors do not outweigh the need to protect society in the way the district court reasonably chose by sentencing him to five years, with two years fixed. Beese’s arguments do not show an abuse of discretion.

Beese’s criminal history shows there is an undue risk that he will reoffend. As the district court surmised, Beese was willing to engage in extremely dangerous conduct simply because he

wanted to avoid being arrested for violating his probations. The fact that Beese committed the instant offense while on three separate probations indicates he is not amenable to community supervision and probation. The sentence imposed provides proper punishment for Beese's criminal conduct and deterrence to him and other possible offenders. A lesser sentence would depreciate the seriousness of the instant offense. Beese has failed to show that the district court abused its discretion by sentencing him to five years with two years fixed for felony eluding a peace officer.

CONCLUSION

The state respectfully requests this Court to affirm the district court's orders revoking probation and imposing sentence in Idaho Supreme Court Case Numbers 48387-2020, 48388-2020, 48389-2020, and 48390-2020, and the Judgment of Conviction in Idaho Supreme Court Case Number 48390-2020.

DATED this 18th day of August, 2021.

/s/ John C. McKinney
JOHN C. MCKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of August, 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/ John C. McKinney
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