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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 48416-2020 & 48417-2020
Plaintiff-Respondent,)	
)	
v.)	Shoshone County Case Nos.
)	CR-2017-812 & CR-2017-1016
)	
UMBERTO MAINES CARON,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Umberto Maines Caron failed to show that the district court abused its discretion by revoking his probations?

ARGUMENT

Caron Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

In June of 2017, Terry Belling drove past Umberto Maines Caron on Dobson pass near Wallace, Idaho. (PSI, pp. 51-52 (citations to electronic file named “Appeal Volume 1 – Conf Exh CR17-1016 . . .”).) Terry heard the sound of a horn as he passed Caron, and saw Caron wave his

hand when he looked back. (PSI, p. 52.) Terry thought Caron needed help, and proceeded to back his vehicle towards Caron. (PSI, p. 52.) As Terry approached Caron's vehicle, Caron exited his vehicle and shouted at Terry. (PSI, p. 52.) Caron then drew a firearm from his back and pointed it at Terry. (PSI, p. 52.) Terry began to drive away, and Caron fired the weapon. (PSI, p. 52.) Terry drove to the top of the pass and told other people not to drive down it, as there was a man with a gun. (PSI, p. 52.) Terry called authorities, and observed Caron driving up the hill towards him and other people he was talking to. (PSI, p. 52.) A truck driver fell as he attempted to get into his vehicle, and Caron spun around Terry and the truck driver in his Subaru before driving away. (PSI, pp. 52-53.) Terry gave the Subaru plate number to authorities, who then arrested Caron at his residence. (PSI, pp. 51-52.) Upon a search of Caron, authorities located a small plastic bag containing methamphetamine. (PSI, p. 52.)

Under case number CR-2017-812, the state charged Caron with one count of aggravated assault, and one count of possession of a controlled substance. (48416 R., pp. 55-56.) While Caron was out on bond, authorities responded to his residence after he reported he had been threatened. (PSI, pp. 23-24; 48416 R., pp. 34, 53.) Authorities smelled a strong odor of marijuana coming from his residence, obtained a search warrant, and located 181 marijuana plants in Caron's basement, as well as numerous containers containing marijuana, paraphernalia, firearms and ammunition. (PSI, p. 24.) Under case number CR-2017-1016, the state charged Caron with one count of manufacturing a controlled substance, one count of trafficking in marijuana, and one count of possession of drug paraphernalia. (48417 R., pp. 49-50.)

In CR-2017-812, Caron pleaded guilty to aggravated assault, and the district court sentenced him to four years, with one year determinate, concurrent, and placed Caron on probation for a period of two years. (48416 R., pp. 81, 100-104.) In CR-2017-1016, Caron pleaded guilty

to manufacturing a controlled substance, and the district court sentenced him to four years, with one year determinate, concurrent, and placed Caron on probation for a period of two years. (48417 R., pp. 52, 72-77.)

In both cases, the state filed motions for probation violation, alleging that Caron introduced contraband into a secured facility, tested positive for methamphetamine or marijuana on five different occasions, and failed to provide urine samples five times over a four month period. (48416 R., pp. 121-125; 48417 R., pp. 94-98.) The district court revoked Caron's probations and placed him on a period of retained jurisdiction. (48416 R., pp. 138-139; 48417 R., pp. 111-112.) Following Caron's periods of retained jurisdiction, the district court placed him on probation for a period of two years. (48416 R., pp. 149-152; 48417 R., pp. 137-140.)

About five months later, the state filed motions for probation violation, alleging that Caron was discharged from Restored Paths/Heritage Health for incompliance with treatment protocol, and that he tested positive for methamphetamine or marijuana on four occasions. (48416 R., pp. 174-177; 48417 R., pp. 192-195.) Caron admitted violating his probation and the district court reinstated Caron's probation. (48416 R., pp. 194, 196-197; 48417 R., pp. 213-214.)

About four months later the state again filed motions for probation violation, alleging that Caron was discharged from Restored Paths/Heritage Health for incompliance with treatment protocol, and that he tested positive for methamphetamine or marijuana on twelve occasions. (48416 R., pp. 210-213; 48417 R., pp. 230-233.) Caron admitted violating his probation and the district court again reinstated probation. (48416 R., pp. 226-228; 48417 R., pp. 262-264.)

Three months later, the state filed motions for probation violation, alleging that Caron tested positive for marijuana on three occasions and that he failed to report for random urinalysis sampling on six occasions. (48416 R., pp. 233-237; 48417 R., pp. 269-273.) Caron admitted

violating his probation and the district court then revoked Caron's probation and executed the underlying sentences. (48416 R., pp. 256-258; 48417 R., pp. 283-285.) Caron filed timely appeals. (48416 R., pp. 260-262; 48417 R., pp. 287-289.)

On appeal, Caron argues that "the district court abused its discretion when it revoked his probation." (Appellant's brief, p. 1.) Caron has failed to show that the district court abused its discretion by revoking his probations and executing the underlying sentences.

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) (citations omitted). 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, 326, 834 P.2d 326, 328 (Ct. App. 1992)).

C. Caron Has Shown No Abuse Of The District Court's Discretion

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

At the disposition hearing, the district court considered "all of the original goals of sentencing: the protection of society, deterrence, punishment and rehabilitation." (Tr., p. 12, Ls. 12-16 (citations to electronic file named "Appeal Volume 1 TRANSCRIPTS CR17-812 . . .").)

The district court acknowledged that Caron's "probation officer has worked hard with [him] and certainly wanted to give [him] an opportunity to participate in the Mental Health Drug Court that they operate in Kootenai County." (Tr., p. 13, Ls. 3-7.) The district court stated that it is "familiar with that court, and it does work quite well for many folks. But they do have a requirement that people live within Kootenai County if you're going to participate in that. And that has not worked out for [Caron]. It's not a commuter type of a court program." (Tr., p. 13, Ls. 7-12.) The district court examined Caron's "history and looked at it. And obviously, it's [his] mental health that ... is the thing that drives [his] use of marijuana and [his] behaviors that have gotten [him] into trouble in all of these cases." (Tr., p. 13, Ls. 14-17.) The district court stated that "it's just the unfortunate reality for many folks that when they have a mental health issue, such as [Caron has], that they aren't able to control it through treatment and medication, and they wind up not doing that well on probation and they wind up committing other offenses." (Tr., p. 13, Ls. 18-23.)

The district court stated that it was "not confident that if [it] reinstated [Caron] on probation at this point that [he] would succeed." (Tr., p. 14, Ls. 7-9.) The district court recognized its discretion to retain jurisdiction, but it had "already done that" and did not believe that "additional time in that program would really benefit [Caron] and address the goals of sentencing in any significant way." (Tr., p. 14, Ls. 12-17.) The district court stated that what incarceration would "provide is a safe environment and an opportunity for someone to get stable and an opportunity to try and get their medications lined up and a routine set so they can succeed in society without violating the laws or using drugs or anything like that." (Tr., p. 14, L. 24 – p. 15, L. 5.) The district court noted that "very soon after being placed in the custody of the Department, [Caron] will be eligible for parole, and that is something that [he has] to earn." (Tr., p. 15, Ls. 12-15.) The district court stated that Caron has to earn parole "by following the rules of the facility and the

Department” and “complying with any medication requirements and obeying the law.” (Tr., p. 15, Ls. 15-18.)

Caron argues that the mitigating factors—mental and physical health issues, substance abuse issues, commitment to treatment and family support—show an abuse of discretion. (Appellant’s brief, pp. 5-7.) Caron’s argument does not show an abuse of discretion. His LSI score is thirty-three, placing him in the high risk to reoffend category. (PSI, p. 32.) While on probation Caron failed twenty-four urinalyses and failed to provide eleven urine samples. (48416 R., pp. 123-124, 176, 212, 235-236.) He tried to foil monitoring with a “urine tube.” (48416 R., pp. 130.) Caron was unsuccessfully discharged twice from Restored Paths/Heritage Health for non-compliance with treatment protocol. (48416 R., pp. 176, 212.) In the final report of probation violation, Caron’s supervising officer recommended “a period of local incarceration,” and stated that Caron “would benefit from additional treatment and counseling offered through the Idaho Department of Correction and this treatment will help prepare him for another opportunity at probation.” (48416 R., p. 236.)

Caron’s repeated failures on community supervision show that probation is not achieving the goals of rehabilitation. Caron is not amenable to probation, and he’s exhausted the district court’s resources for alternative treatment. Execution of the underlying sentences provides appropriate protection to society, an opportunity at rehabilitation, and deterrence to Caron and other possible offenders. Caron is not amenable to probation, and there’s an undue risk that he will reoffend without a period of incarceration. Caron has failed to show that the district court abused its discretion by revoking his probations.

CONCLUSION

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

DATED this 15th day of September, 2021.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

ZACHARI S. HALLETT
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of September, 2021, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ Kenneth K. Jorgensen
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