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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 48776-2021
)	
v.)	NEZ PERCE COUNTY NO. CR35-20-5088
)	
MICHAEL BROWNE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Michael Browne appeals from the district court’s order revoking his probation and executing his underlying sentence. He argues the district court abused its discretion by failing to reinstate his probation.

Statement of the Facts & Course of Proceedings

After he was arrested and searched pursuant to a misdemeanor warrant in an unrelated case, Mr. Browne was found to be in possession of methamphetamine, and later pled guilty to felony possession of a controlled substance. (R., pp.17-18.) At the sentencing hearing in March

2021, the district court placed him on probation for five years, with an underlying sentence of five years, with two years fixed. (R., pp.118-24; Tr., pp.1-19.)

A few days later, the State filed a motion for a warrant, alleging that Mr. Browne violated his probation. (R., pp.134-41.)

Mr. Browne's probation violation was not a result of him absconding, committing new crimes, or using drugs or alcohol. Rather, it was because he showed up one day late to report for supervision, even with his best efforts to make it in time. Mr. Browne was living in Spokane, Washington, where he was residing in a sober living facility, regularly seeing a counselor, attending various recovery programs and classes, and planning to start college courses at Spokane Community College. (PSI, pp.6, 25-26; *see also* Tr., p.21, Ls.12-18, p.22, Ls.12-18.) After being released on probation, Mr. Browne applied for an interstate compact so that he could continue living in Spokane. (*See* Exh., pp.2-9.) Mr. Browne submitted an interstate compact application that his probation officer believed to be inappropriate, and as a result, she did not submit the application. (R., pp.136-37; Exh., pp.10-11.) His probation officer did not inform Mr. Browne that his application was inappropriate or request that he submit a new one. (Exh., pp.10-11; R., pp.136-37.) Rather, she told Mr. Browne that he needed to report to the probation office in Lewiston, Idaho – a city approximately one hundred miles away from where Mr. Browne lived – within five days, and find a place to live there. (R., pp.136-37; Exh., pp.10-11.) Upset that he would have to relocate to Lewiston from Spokane – where he had set up a new life and was focused on his recovery and rehabilitation – Mr. Browne expressed his frustration through emails to his probation officer. (Exh., p.10; Tr., p.26, L.15 – p.27, L.8.) The following morning, Mr. Browne sent a follow-up email, acknowledging that the comments he made in the previous emails were inappropriate, and immediately apologized. (Exh., p.10; *see also* Tr., p.20,

Ls.4-11, p.25, Ls.17-22.) Mr. Browne called his probation officer and told her he could not find a ride to Lewiston in time for his meeting. (R., p.137; *see also* Tr., p.21, L. 19 – p.22, L.18, p.25, L.23 – p.26, L.14.) He explained that he was having trouble finding a ride and could not purchase a bus ticket because he did not have any form of identification. (*See* Tr., p.27, Ls.3-8.) At the disposition hearing, Mr. Browne informed the district court that it took him and his father the entire weekend to figure out how to get him a bus ticket without identification. (Tr., p.27, Ls.6-8.) When Mr. Browne showed up to the Lewiston probation office at 8:15 the morning after he was expected to report, he was told to return at 12:30. (R., pp.136-37, 140-41; Tr., p.21, L.23 – p.22, L.2.) When he returned at 12:00, he was arrested for failing to report to his probation officer. (R., pp.136-37, 140-41; Tr., p.21, L.19 – p.22, L.18.)

At the joint admit/deny hearing and disposition hearing in late March 2021, Mr. Browne admitted to violating his probation by failing to report to his probation officer on time. (*See* Tr., p.19, L.11 – p.21, L.4.) At that hearing, defense counsel recommended that the district court reinstate Mr. Browne’s probation, while the State recommended the district court execute Mr. Browne’s underlying sentence of five years, with two years fixed. (Tr., p.22, Ls.19-24, p.24, Ls.5-6.) The district court revoked Mr. Browne’s probation, executed his underlying sentence, and retained jurisdiction (a “rider”).¹ (R., pp.146-49; Tr., p.28, Ls.6-10.) Mr. Browne timely appealed. (R., pp.150-57.)

¹ In early May 2021, Mr. Browne filed a Criminal Rule 35 motion. (R., pp.184-218.) The district court has not yet ruled on this motion.

ISSUE

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

ARGUMENT

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

Idaho's appellate courts use a two-step analysis to review a district court's decision to revoke probation. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, this Court must determine "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 determination of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

Here, Mr. Browne does not challenge his admission to violating his probation. (Tr., p.19, L.11 – p.21, L.4.) "[W]hen a probationer admits to a direct violation of his probation agreement, no further inquiry into the question is required." *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992) (citation omitted). Rather, Mr. Browne argues that the district court abused its discretion by revoking his probation.

After a probation violation has been proven, "[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. Sanchez*, 149 Idaho 102, 105 (2009). "When reviewing a lower court's decision for an abuse of discretion, this Court must analyze '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) (quoting *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018)).

“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). “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 (Ct. App. 1995). The court may consider the defendant’s conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987.)

In this case, Mr. Browne submits the district court abused its discretion in revoking his probation because his probation was achieving its rehabilitative objective while providing adequate protection for society.

Since he was released on his own recognizance in October 2020, Mr. Browne has actively sought treatment. He successfully completed treatment at New Horizon Care Center (“Sun Ray Court Treatment Center”) in Spokane, Washington in February 2021. (PSI, pp.14-15; Tr., p.8, Ls.2-4.) The program director at Sun Ray Court Treatment Center noted that Mr. Browne attended all groups, actively participated, and had a positive attitude. (PSI, pp.14-15.) The pre-sentence investigator noted that since Mr. Browne entered treatment, he stayed in touch and was very proactive in making sure all the documentation needed from the treatment center to complete the pre-sentence investigation (“PSI”) was provided. (PSI, p.13.)

After successfully completing his treatment at Sun Ray Court Treatment Center, Mr. Browne voluntarily began attending the Reclaim Project recovery program at Pura Vida Recovery. (PSI, pp.25-26; *see also* Tr., p.8, Ls.4-5.) The director of Reclaim Project noted that during his time at the facility, Mr. Browne was engaged in volunteer activities, classes, and workshops. (PSI, p.26.) He had three negative urinalysis tests, and abided by all of the house rules. (PSI, p.26.) The program director reported that Mr. Browne got along well with his peers,

and stated, "It is a pleasure to have Mr. Browne in our program and we hope that he can continue with us." (PSI, p.26.) In addition to attending classes at Pura Vida Recovery every Tuesday and Thursday, Mr. Browne was also attending meetings every Monday and Friday at Integrated Recovery, participating in parenting classes every Tuesday through Thursday at Partners with Families and Children, and was donating his free time to Revival General Contracting, (PSI, p.25; Tr., p.8, Ls.1-15, p.21, Ls.6-18.) Further, prior to disposition, Mr. Browne was accepted in to Spokane Community College. (Tr., p.21, L.12.) By working to overcome his addiction, Mr. Browne was improving himself in a way that was not only beneficial for him, but also for society as well.

Although Mr. Browne's lack of resources caused him to commit a technical violation of his probation, he is not a threat to the community, and he has demonstrated a commitment to turning his life around. He did not violate his probation by absconding, committing new crimes, or using drugs or alcohol. Since the district court released Mr. Browne on his own recognizance, he has actively sought treatment and enrolled in various recovery classes and programs, and he received positive feedback from his program directors. Additionally, he enrolled in Spokane Community College and was about to begin taking college courses. Mr. Browne has demonstrated that he has the ability to be a productive member of society under proper control and supervision, and with the proper treatment. Reinstating his probation will allow Mr. Browne to continue with treatment and be a contributing member of society, and also provides adequate protection for the community.

In light of these facts, Mr. Browne submits that the district court did not exercise reason, and therefore abused its discretion when it revoked his probation. He submits that the district court should have reinstated his probation.

CONCLUSION

Mr. Browne respectfully requests that this Court vacate the district court's order revoking his probation and retaining jurisdiction, and remand his case to the district court for an order reinstating his probation.

DATED this 26th day of July, 2021.

/s/ Kiley A. Heffner
KILEY A. HEFFNER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of July, 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

KAH/eas