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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48776-2021
Plaintiff-Respondent,)	
)	Nez Perce County No.
v.)	CR35-20-5088
)	
MICHAEL STEVEN BROWNE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Has Michael Browne failed to show that the district court abused its discretion when it revoked his probation and executed his underlying sentence?

ARGUMENT

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

A. Introduction

On August 25, 2020, Browne was arrested on a misdemeanor warrant for failure to appear. (PSI, p. 1.) During the search incident to his arrest, law enforcement discovered a glass pipe and a plastic bag with a white crystal-like substance in it. (Id.)

The court released Browne on his own recognizance pending trial. (R., p. 88.) During his pre-trial release, Browne agreed to report through Justice Services in Lewiston, Idaho. (R., p. 89.)

On October 27, 2020, the state charged Browne with one count of felony possession of methamphetamine in violation of I.C. § 37-2732(c)(1). (R., p. 97.) The state also sought a persistent violator sentencing enhancement due to prior felony convictions in the State of Washington—two for malicious mischief, one for assault, and two for possession of a controlled substance. (R., p. 98.) Browne pled guilty to the charge of felony possession of methamphetamine. (R., p. 111.)

On March 11, 2021, the district court sentenced Browne to five years, with two years fixed, and suspended the sentence for a period of five years' probation. (R., pp. 118-19.)

On March 23, 2021, the state moved for a warrant, alleging Browne had failed to report to his probation officer. (R., pp. 134, 136.) According to the probation violation report attached to the motion, Browne was living in Spokane, Washington “at a sober house.” (R., p. 136.) He was required to report to Lewiston, Idaho. (R., p. 137.) Browne wrote a “very inappropriate interstate application” requesting permission to report in Washington, which his probation officer apparently did not submit for approval. (See R., pp. 136-37; Ex., pp. 2-6.) Among other things, in response to the question “Are you required to register as a sex offender?” Browne wrote, “Fuck no Rappos + Chimo’s should be castrated[.]” (Ex., p. 4.) In response to the question, “How will you pay the 100\$ application fee?” Brown wrote, “By selling my ass. LOL. By ABD Plazma donation family, or college or a go fund me page. Cause I ain’t dealing dope.” (Ex., p. 5.) When his probation officer informed him that he would need to report in Lewiston because this interstate application could not be submitted, Browne sent two emails to her full of profanity and accusations. (See Ex., pp. 10-11.) Browne also posted on Facebook a statement about his probation officer too profane

to quote. (See Ex., p. 12.) He apologized to his probation officer via email. (Ex., p. 10.) The following day, however, he called his probation officer and said “he did not have money for a bus ticket to Lewiston and wasn’t sure if he could report” on the required day, “then asked if probation wanted him to go punch a cop so that he [could] get transportation” to Lewiston. (R., p. 137.) Browne ultimately reported in Lewiston a day late and was taken into custody. (R., p. 141.)

On March 25, 2021, the court held an admit/deny hearing. (R., p. 145.) At the hearing, Browne admitted that he had “failed to appear at Probation and Parole before 4:00 p.m. on March 22nd.” (Tr., p. 21, L. 23 – p. 22, L. 2.¹) The district court revoked probation and imposed his original sentence, retaining jurisdiction. (R., pp. 146-48.)

Browne timely appealed. (See R., pp. 146, 150.)

B. Standard Of Review

“Review of a probation revocation proceeding involves a two-step analysis. First, it is determined whether the terms of probation have been violated. If they have, it is then determined whether the violation justifies revocation of the probation.” State v. Garner, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017) (citations omitted). As to the first step, a “court’s finding that a violation has been proved will be upheld on appeal if there is substantial evidence in the record to support the finding.” State v. Knutsen, 138 Idaho 918, 923, 71 P.3d 1065, 1070 (Ct. App. 2003) (citations omitted). “As to the second step, the decision whether to revoke a defendant’s probation for a violation is within the discretion of the district court.” Id. (citations omitted).²

¹ The state refers to the page numbers of the pdf file that includes the transcripts submitted to this Court on appeal.

² Browne admits that he violated the terms of his probation. (See Appellant’s brief, p. 4.) Accordingly, this Court need only consider the second step of the probation revocation review.

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

“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. Hanson, 150 Idaho 729, 733, 249 P.3d 1184, 1188 (Ct. App. 2011). Courts act within their discretion to revoke a defendant’s probation when the defendant’s violations demonstrate that probation is not serving its rehabilitative purpose. See, e.g., State v. Cornelison, 154 Idaho 793, 798-99, 302 P.3d 1066, 1071-72 (Ct. App. 2013) (affirming probation revocation due to defendant’s use of alcohol and marijuana and failure to report because probation was not serving the goal of rehabilitation); Hanson, 150 Idaho at 733, 249 P.3d at 1188 (affirming probation revocation because the violations demonstrated probation was not achieving rehabilitation and that defendant’s heavy drinking posed a risk to society).

State v. Adams is also instructive. 115 Idaho 1053, 772 P.2d 260 (Ct. App. 1989). In Adams, the Idaho Court of Appeals affirmed the district court’s revocation of probation when the defendant “was a dubious candidate for probation when the original sentence was pronounced and suspended,” and the defendant subsequently violated the terms of his probation “by making disrespectful and profane statements to a custodial officer[.]” Id. at 1055, 772 P.2d at 262.

Here, the district court appropriately revoked probation. As described further below, Browne’s probation violation and circumstances surrounding it showed that he was not a good candidate for probation, which failed to have a rehabilitative effect on him, and he posed a risk to society. The district court had been lenient when granting probation in the first place, a decision contrary to the PSI’s recommendation. (See PSI, p. 13.) At sentencing, the court had noted that Browne’s “prior record’s horrendous, quite frankly.” (Tr., p. 12, Ls. 10-11.) The instant felony was his tenth. (PSI, p. 12.) And Browne had a history of noncompliance with probation. (PSI, p. 13.) Browne reported for the PSI that “he has never completed a single bit of his multiple terms of supervision even though he has basically been on probation since he was 15.” (PSI, p. 3.) Despite these considerations, the court acknowledged the steps Browne had taken “since this case started” and decided “to give [Browne] one chance[.]” (Tr., p. 12, Ls. 14-17.) The district court even warned Browne at the sentencing hearing, “And I’m going to go on the record right now, Mr. Browne, that if you mess up on probation, given your record, given all the things I’ve seen in this case, we’ll be talking about prison at that time, okay?” (Tr., p. 12, Ls. 22-25.) Like the defendant in Adams, Browne was a dubious candidate for probation to begin with, and his failure to report and profanity directed at his probation officer were more than sufficient grounds to revoke probation. See 115 Idaho at 1055, 772 P.2d at 262. Browne demonstrated—through his failure to timely report and his communications to and about his probation officer—that he would not abide by the terms of probation. As the state noted at the admit/deny hearing, this conduct showed that Browne was “running his own program” and “not going to abide by any terms and conditions they give him.” (Tr., p. 25, Ls. 12-14.) Probation was not having its intended rehabilitative effect. See Cornelison, 154 Idaho at 798-99, 302 P.3d at 1071-72 (affirming probation revocation because probation was not serving the goal of rehabilitation). Further, the extreme nature of his words

regarding his probation officer in the Facebook post and his question whether he should “punch a cop” could fairly be construed to demonstrate he posed a danger to the community. (See Ex., p. 12; R., p. 137; Hanson, 150 Idaho at 733, 249 P.3d at 1188 (affirming probation revocation because probation was not achieving rehabilitation and defendant posed a risk to society).) The district court also noted that Browne would be able to participate in the rider program and that he would have another chance at probation if upon completion of the rider program, the Department of Correction recommended probation. (Tr., p. 29, Ls. 6-13.) There was no abuse of discretion.

CONCLUSION

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

DATED this 17th day of August, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th 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/ Kenneth K. Jorgensen
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KKJ/dd