

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

12-8-2021

State v. Foruria Respondent's Brief Dckt. 48688

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Foruria Respondent's Brief Dckt. 48688" (2021). *Not Reported*. 7290.
https://digitalcommons.law.uidaho.edu/not_reported/7290

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

MARK A. KUBINSKI
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48688-2021
Plaintiff-Respondent,)	
)	
v.)	Ada County Case No. CR01-17-4985
)	
WARNE MATEO FORURIA,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Warne Mateo Foruria failed to show that the district court abused its discretion by revoking his probation?

ARGUMENT

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

A. Introduction

Probation and parole officers conducted a home visit on Warne Mateo Foruria and Jamie Nelson, and suspected the two were using controlled substances. (PSI, p. 145.) When questioned, Foruria and Nelson admitted to using methamphetamine two days prior. (PSI, p. 145.) Foruria’s

phone continuously rang during the compliance check of the phone, and authorities located information indicating both Foruria and Nelson were buying and selling drugs. (PSI, p. 145.) During a search of Foruria's vehicle, authorities located 535.42 grams of bath salts inside a black laptop case. (PSI, p. 145.)

The state charged Foruria with one count of possession of a controlled substance with the intent to deliver, and a persistent violator enhancement as part two of the information. (R., pp. 32-33, 45-46.) Foruria pleaded guilty to possession of a controlled substance, and the state agreed to dismiss the persistent violator enhancement. (R., p. 58.) In January of 2018, the district court sentenced Foruria to four years, with one year determinate, and placed him on a period of probation for a period of four years. (R., pp. 60-64.)

In December of 2020, the state filed a motion for bench warrant for probation violation, alleging that Foruria failed to complete a treatment program, failed to not associate with individuals who had contact with the criminal justice system, or used drugs, failed to reside at his grandmother's residence until he was sober and engaged in treatment, and failed to pay the costs of supervision, fines, fees funds and restitution as ordered. (R., pp. 72-78.) Foruria also used methamphetamine on five different occasions, and consumed alcohol on two occasions. (R., pp. 72-78.) The district court revoked Foruria's probation, and executed the underlying sentence of four years, with one year determinate and credit for seventy-two days served. (R., pp. 133-135.) Foruria then filed a timely appeal. (R., pp. 137-139.)

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

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)).

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, 270, 429 P.3d 149, 158 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

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

The record shows the district court perceived its discretion, acted within its discretion and consistently with applicable legal standards, and imposed a reasonable sentence.

At the disposition hearing, the district court considered “the Toohill factors and the nature of the offense, the character of the offender, any mitigating and aggravating factors, fulfilling the objectives of protecting society, achieving deterrence, rehabilitation, or retribution,” as well as “the criteria for sentencing under Idaho Code 19-2521.” (Tr., p. 24, Ls. 15-21.) The district court

noted the "record reflects that the defendant back in 2018, his LSI was 24. It hasn't been recalculated." (Tr., p. 24, Ls. 22-24.) The district court stated it gave Foruria a "very lenient sentence of one year fixed and three years indeterminate and given the opportunity to complete probation. That was after he had a Rider in 2009." (Tr., p. 24, L. 24 – p. 25, L. 4.) The district court stated it's the "underlying charge that is most concerning to the Court, combined with the probation violations of continued use of methamphetamine and inability to complete treatment within the community." (Tr., p. 25, Ls. 8-12.) The district court found Foruria to be "a potential risk to the other participants in Drug Court," and that Foruria is "not appropriate for the Drug Court program." (Tr., p. 25, Ls. 18-22.)

The district court stated Foruria "simply need[s] to decide what it's going to take to motivate [him] to put treatment first, to put [his] sobriety first." (Tr., p. 26, Ls. 12-14.) The district court stated "[u]nless [Foruria] can learn to manage [his] addiction, [he] simply cannot have all those other things that [he] want[s] to be successful in, in [his] life, being a good dad, being a supportive husband, having a fulfilling career." (Tr., p. 26, L. 25 – p. 27, L. 5.) The district court found Foruria was not "amendable to supervision in the community at this time." (Tr., p. 27, Ls. 24-25.)

Foruria argues that the mitigating factors—that rehabilitation is a process, and not a one-time event, Foruria's compliance with probation for some time, desire for treatment, employment and family support—show an abuse of discretion. (Appellant's brief, pp. 5-6.) Foruria's argument does not show an abuse of discretion. His extensive criminal history contains numerous felony convictions, opportunities on probation, and probation violations. (PSI, pp. 146-150.) Foruria had been on parole at the time of the instant offense, and sanctioned in the CAPP facility for 180 days

for corresponding with inmates and having contact with felons without permission, failing to participate in treatment, and absconding supervision. (PSI, p. 150.)

Foruria's probation officer stated Foruria "did complete an inpatient program at Northpoint and then transferred to an outpatient program at Ashwood but did not do very well and left the program." (R., p. 78.) After instructing Foruria to get back into treatment, the probation officer discovered that Foruria "was not actively trying to get into any treatment providers as directed, and it appeared that his wife Jamie was the one that was trying to help him and did all the paperwork." (R., p. 78.) The supervising officer noted that "[d]espite the numerous opportunities offered to [Foruria] regarding treatment, opportunities to get employment, and opportunities to show he could comply with his Probation [and] Parole Rules Foruria failed to get into treatment and continued to use [m]ethamphetamine." (R., p. 78.) Foruria's probation officer stated "Foruria has shown he has no intention to discontinue his drug use and has no desire to follow through with treatment, so he presents a danger to himself and others." (R., p. 78.)

Foruria's LSI score, extensive criminal history and failure on probation shows that he is not amenable to community supervision, and there's an undue risk that he will reoffend without a period of incarceration. Probation is not achieving the goal of rehabilitation, and Foruria's criminal conduct presents a risk to society. Imposition of the underlying sentence provides appropriate protection to the community, and deterrence to Foruria's criminal thinking. Continuance on probation would depreciate the seriousness of the underlying offense and Foruria's probation violations, and only further enable Foruria's criminal behavior. Foruria has shown that he is not a suitable candidate for community supervision, and he's failed to show that the district court abused its discretion by revoking his probation.

CONCLUSION

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

DATED this 8th day of December, 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 8th day of December, 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:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

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