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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47986-2020
)	
v.)	ADA COUNTY NO. CR-MD-2016-948
)	
JAMES ROBERT KUEHNEL, JR.,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

James Kuehnel was on probation when the State filed a motion to revoke probation. Following his entry of admissions to some of the alleged probation violations, the district court revoked Mr. Kuehnel’s probation and executed his underlying sentence. Mr. Kuehnel appeals, and he argues the district court abused its discretion by revoking his probation.

Statement of Facts and Course of Proceedings

In April 2016, a second amended criminal complaint was filed alleging that Mr. Kuehnel committed the following crimes: felony domestic violence, felony intimidating a witness, misdemeanor destruction of a telecommunication line, and seven counts of violation of a no-

contact order.¹ (R., pp.45-48.) Pursuant to a binding plea agreement, Mr. Kuehnel subsequently pled guilty to felony intimidating a witness, two misdemeanor no-contact order violations, and one felony no-contact order violation.² (R., pp.83-95.) Mr. Kuehnel was sentenced to five years, with two years fixed, for the witness intimidation and three years, all indeterminate, for the felony no-contact order violation.³ (R., pp.85, 100-04.) The two felony sentences were ordered to run consecutive to one another but concurrently to all other cases that Mr. Kuehnel had at the time, and the district court retained jurisdiction (a “rider”). (R., pp.85, 100-04.) In April 2017, Mr. Kuehnel was released onto probation after successfully completing his rider.⁴ (R., pp.111-16.)

In January 2020, a motion for bench warrant for probation violation was filed. (R., pp.140-71.) Mr. Kuehnel was alleged to have committed the following violations of the terms of his probation: (1) failing to obtain permission from his supervising officer before changing residences, (2) failing to maintain full-time employment, (3) consuming alcohol on one occasion in December 2019, (4) using methamphetamine on one occasion in August 2019, and (5) using methamphetamine on a second occasion in August 2019.⁵ (R., p.141.) Mr. Kuehnel

¹ Out of the seven alleged no-contact order violations, six were charged as misdemeanors and one was charged as a felony.

² Pursuant to the plea agreement, the other charges were dismissed.

³ The parties agreed to have Mr. Kuehnel sentenced to credit for time served on the two misdemeanor no contact order violations. (PSI, pp.85, 96.)

⁴ However, Mr. Kuehnel had a parole hold for an unrelated matter at the time that he was placed on probation, and Mr. Kuehnel was not released from custody until May 2019. (Tr., p.5, Ls.5-12.)

⁵ For allegations (4) and (5), the State alleged that Mr. Kuehnel admitted to using, and tested positive for, methamphetamine on August 2, 2019, and that he then tested positive for methamphetamine again on August 5, 2019. (R., p.141.) Mr. Kuehnel was sanctioned to thirty self-help meetings in thirty days for his controlled substance use, which he successfully completed. (R., p.146.)

subsequently entered admissions to having consumed alcohol on one occasion and using methamphetamine on one occasion. (R., p.181; Tr., p.5, Ls.13-19.)

At the disposition hearing, the State recommended that the district court revoke Mr. Kuehnel's probation and execute his underlying sentence. (Tr., p.9, Ls.21-23.) Mr. Kuehnel's trial counsel recommended that the district court either give Mr. Kuehnel another rider or have him serve time in the Ada County jail as a sanction until he could transfer his probation to California. (Tr., p.16, L.3—p.17, L.3.) The district court revoked Mr. Kuehnel's probation and executed his underlying sentence. (R., pp.184-86; Tr., p.26, Ls.2-9.) However, the district court reduced Mr. Kuehnel's sentence on the witness intimidation charge to five years, with one year fixed. (R., pp.184-86; Tr., p.26, Ls.10-17.) Mr. Kuehnel filed a timely notice of appeal from the order revoking his probation. (R., pp.193-95.)

After the disposition hearing, Mr. Kuehnel filed a motion to reduce sentence pursuant to Idaho Criminal Rule 35. (R., p.188.) The district court subsequently denied Mr. Kuehnel's motion to reduce sentence.⁶ (R., pp.196-200.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Kuehnel's probation and executed his underlying sentence?

⁶ The denial of Mr. Kuehnel's motion to reduce sentence is not being challenged in this appeal.

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Kuehnel's Probation And Executed His Underlying Sentence

The district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to review a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines "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. Kuehnel does not challenge his admissions to violating his probation. "[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. Kuehnel submits that the district court did not exercise reason, and therefore abused its discretion, by revoking his probation.

"After a probation violation has been proven, the decision to revoke probation . . . lies within the sound discretion of the trial court." *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). "A district court's decision to revoke probation will not be overturned on appeal absent a showing that the court abused its discretion." *Sanchez*, 149 Idaho at 105.

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. 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.

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). Just as is the case when reviewing the original imposition of sentence, the appellate court will independently review the entire record, “focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.” *State v. Pierce*, 150 Idaho 1, 5, 244 P.3d 145, 149 (2010). The court may consider the defendant’s conduct before and during probation. *Roy*, 113 Idaho at 392.

Prior to being released onto probation, Mr. Kuehnel successfully completed the programming on his rider without any disciplinary sanctions. (PSI,⁷ pp.10-11.) Mr. Kuehnel’s probation officer indicated that Mr. Kuehnel “appeared to be doing well, as he secured stable employment, attending his domestic violence treatment, and providing clean drug tests.” (R., pp.145-46.) After admitting to using methamphetamine, Mr. Kuehnel successfully completed his sanction of thirty self-help meetings in thirty days. (R., p.146.) Mr. Kuehnel continued to attend self-help meetings after completing his sanction as well. (R., p.146.) Mr. Kuehnel had been gainfully employed until December 2019. (R., p.146.) Although Mr. Kuehnel had been removed from his transition housing on December 21, 2019, he returned to that housing on December 26, 2019. (R., p.145.) Furthermore, Mr. Kuehnel obtained a domestic violence evaluation for the case he was on parole for after his release from custody and was properly attending his domestic violence treatment. (R., p.146.)

⁷ Citations to the PSI refer to the 103-page electronic document included with the confidential materials that is labeled “Kuehnel 47986 psi.”

In December 2019, a police report was submitted alleging that Mr. Kuehnel had been in an altercation with his wife. (R., p.145.) Mr. Kuehnel's probation officer reported that "[t]he defendant appeared to do well and there were no concerns until the police report." (R., p.146.) However, the State did not make any allegation in regard to this incident in the motion for probation violation and no charges were subsequently filed. (R., pp.140-41; Tr., p.24, L.22—p.25, L.7.) Mr. Kuehnel's wife denied that there was any inappropriate contact between Mr. Kuehnel and her. (PSI, pp.89-91.) Despite Mr. Kuehnel only entering admissions to alcohol and methamphetamine use, the district court stated that "[f]rom the letter that your wife wrote, it seems that she claims that it was all lies and that you're innocent of the probation violation charges, but you have admitted those charges regarding the fight. So I think that's largely irrelevant." (Tr., p.25, Ls.3-7.)

Prior to the disposition hearing, Mr. Kuehnel's daughter wrote a letter in support of him and indicated that he would have family support in California. (PSI, p.93.) Mr. Kuehnel also provided a letter to the district court in which he indicated that he had been regularly attending Alcoholics Anonymous meetings and his domestic violence classes every week. (PSI, p.98.) Mr. Kuehnel informed the district court that he had successfully completed his court-ordered ninety drug and alcohol meetings in ninety days after his release from custody. (Tr., p.19, Ls.14-15.) Based on his progress in his domestic violence treatment, Mr. Kuehnel's custody supervision level had been reduced and he was allowed to see his wife. (Tr., p.20, Ls.2-6.)

In light of these facts, Mr. Kuehnel submits that the district court did not exercise reason, and thus abused its discretion, by revoking his probation. Mr. Kuehnel's progress in treatment demonstrated that he could be successful in the community. Mr. Kuehnel asserts that the district court should have reinstated his probation or given him another rider.

CONCLUSION

Mr. Kuehnel respectfully requests that this Court vacate the order revoking his probation, and that it remand his case to the district court with an instruction that he be returned to probation.

DATED this 2nd day of September, 2020.

/s/ Jacob L. Westerfield
JACOB L. WESTERFIELD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of September, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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DEPUTY ATTORNEY GENERAL
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JLW/eas