

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20180265 & 20180266
Burleigh County No.: 08-2015-CR-02250 & 08-2015-CR-3460

State of North Dakota,)
)
Plaintiff-Appellee,)
)
vs.)
)
Daniel Lynn Goldsack,)
)
Defendant-Appellant.)

APPEAL FROM THE JUNE 28 & 29, 2018,
SECOND AMENDED CRIMINAL JUDGMENTS

SOUTH CENTRAL JUDICIAL DISTRICT

HONORABLE SONNA ANDERSON, PRESIDING

BRIEF OF PLAINTIFF – APPELLEE
STATE OF NORTH DAKOTA

Justin J. Schwarz # 05784
Assistant State's Attorney
Burleigh County
514 E Thayer Ave.
Bismarck, ND 58501
(701) 222-6672

TABLE OF CONTENTS

Paragraph No.

Table of Authorities	Page i
Issue Presented for Review	Page ii
Statement of the Case.....	Page iii
Statement of the Facts	¶ 1
Argument	¶ 6
Conclusion	¶ 12

TABLE OF AUTHORITIES

Paragraph No.

Cases

State v. Causer

2004 ND 75, 678 N.W.2d 552 (N.D. 2004).....¶ 6, 8

State v. Olson

2003 ND 23, 656 N.W.2d 650 (N.D. 2003).....¶ 6

State v. Toepke,

485 N.W.2d 792 (N.D.1992)¶ 6

Rules

N.D.R.E. 1101(d)(3)(E).¶ 10

ISSUE PRESENTED FOR REVIEW

- I. Whether the Court's determination that Defendant violated his conditions of probation and revocation of his probation was proper?

STATEMENT OF THE CASE

The State is essentially in agreement with the Statement of the Case as contained in Defendant's Brief.

STATEMENT OF THE FACTS

[¶ 1] Hearings on Petitions for Revocation of Probation were held in these matters on July 18, 2018. The Petition in each case contained one allegation- that the Defendant violated Condition 9 of Appendix A by failing to report a change of address to the probation officer and his whereabouts being unknown. (Tr. p. 4, lines 16-19). This allegation was denied by Defendant. (Tr. p. 4, lines 22-23).

[¶ 2] The State called Probation Officer Jennifer Goetzfried to testify regarding the allegation. (Tr. p. 5, lines 2-3). Probation Officer Goetzfried testified that Defendant had last been revoked on November 16, 2017, and she did meet with Defendant two times at the end of 2017. (Tr. p. 6, lines 22-25). Probation Officer Goetzfried testified that Surveillance Officer Don Glarum went to Defendant's listed residence on January 13, 2018 to make contact with Defendant, and he was advised by a female that Defendant had been kicked out of the residence and no longer was living there. (Tr. p. 7, lines 1-8). Probation Officer Goetzfried also testified that she received information from Social Services on January 16, 2018 of an alternative place of residence for Defendant. (Tr. p. 7, lines 18-23).

[¶ 3] Probation Officer Goetzfried testified that she then filed a Petition to Revoke Defendant's probation, based upon him not being at the residence of his listed address and no information of an alternative address provided by Defendant. (Tr. p. 8, lines 1-6). Probation Officer Goetzfried had a telephone conversation with Defendant on January 23, 2018. (Tr. p. 8, lines 18-20). Although Defendant was required to report monthly, even after a Petition to Revoke is filed, Defendant did not meet with probation again until his arrest in May, 2018. (Tr. p. 9, line 13- p. 10, line 1).

[¶ 4] Defendant called three witnesses to testify at the hearing. Kayla Vietz testified that she and Defendant have a child together, and that Defendant was staying at the residence in question during December, 2017 and January, 2018. (Tr. p. 14, lines 1-5). Ms. Vietz testified that she was not present when Surveillance Officer Glarum stopped by the residence; that it was a nanny who was there at that time. (Tr. p. 14, lines 11-17). Jessica Goldsack testified that she was the wife of Defendant and had been staying at the residence in question with Defendant during January, 2018. (Tr. p. 18, lines 2-13). Defendant also testified at the hearing, stating that he was residing at the address in question in January, 2018. (Tr. p. 20, lines 7-12). Defendant acknowledged he spoke once to Probation Officer Goetzfried after the Petitions had been filed, got into an argument with her and had not spoken to her since. (Tr. p. 22, lines 12-16; p. 23, lines 3-4). Defendant testified he moved from the residence in question near the end of January or beginning of February to Minot and never reported the new address or had any further contact with Probation Officer Goetzfried. (Tr. p. 24, lines 4-20).

[¶ 5] The Court found that the State had proved the allegation contained in the Petitions. (Tr. p. 26, lines 24-25). The Court revoked Defendant's probation and resentenced Defendant to 6 years straight time on each count in each case, running concurrently with credit for time served and good time. (Tr. p. 29, lines 24-25- p. 30, lines 1-3).

ARGUMENT

- I. Whether the Court's determination that Defendant violated his conditions of probation and revocation of his probation was proper?

[¶ 6] The North Dakota Supreme Court has declared that on a case reviewing a revocation of probation, the Court applies a two-step analysis. See State v. Causer, 2004 ND 75 at ¶30 (678 N.W.2d 552 (N.D. 2004)). The Court first will review the trial court's factual findings, and second review the court's decision to revoke probation based on those findings. See Id. (citing State v. Olson, 2003 ND 23 (656 N.W.2d 650 (N.D. 2003))). The Supreme Court noted that the first step of reviewing the factual findings of a probation violation is done under the clearly erroneous standard. See Id. at ¶31. When reviewing the findings of fact, the trial court is in the position to determine the credibility of witnesses. See Id. (citing State v. Toepke, 485 N.W.2d 792 (N.D.1992)). The Supreme Court went on to state that it would not substitute its judgment for the trial court when there is testimony to support the findings. See Id. (citing Toepke at p. 795). The Supreme Court uses the abuse of discretion standard to review the determination of revocation under the second step. See Id. at ¶32. (citing Olson at ¶15).

[¶ 7] Here, the alleged violation of probation related to Defendant not reporting a change of address and his whereabouts being unknown. Testimony in support of this allegation was provided by Probation Officer Goetzfried. Although there was testimony presented by Defendant in opposition to this violation having been committed, the trial court was in the best position to determine the credibility of witnesses.

[¶ 8] Under Causer, the reviewing court should not substitute its judgment for the trial court's when there is testimony to support the findings. There was ample testimony to support the Court's findings that Defendant violated his probation. Probation Officer Goetzfried testified that a surveillance officer with her office had gone to Defendant's listed residence and was advised that Defendant no longer resided there. Probation Officer Goetzfried also testified that she received information of an alternative residence for Defendant from Social Services. This testimony supports the Court's finding of a violation of probation conditions by Defendant.

[¶ 9] Defendant argues that the trial court erred in considering testimony and statements from the State's Attorney regarding actions from and after January 13, 2018. However, the State's argument regarding the allegation was limited to testimony from Probation Officer Goetzfried about information that the Defendant had changed residences, did not report in January and his whereabouts being unknown. (Tr. p. 25, lines 12-25).

[¶ 10] Defendant additionally challenges the testimony of Probation Officer Goetzfried, stating it was hearsay upon hearsay. The State notes that Rule 1101 of the North Dakota Rules of Evidence states that the rules of evidence do not apply in miscellaneous proceedings, such as granting or revoking probation or parole. See N.D.R.E. 1101(d)(3)(E).

[¶ 11] Based upon the Court's finding that Defendant had violated his probation, the Court revoked Defendant's probation. Revocation was appropriate based upon the violation the Court found had been committed. The most essential element of probation is staying in contact with probation and the probation officer knowing where

the probationer can be contacted. This did not occur in this matter. Therefore, revocation of probation for this violation was appropriate.

CONCLUSION

[¶ 12] The District Court's determination that Defendant had violated his conditions of probation was proper. Revocation of Defendant's probation based upon this finding was appropriate. The Court should affirm the order of the district court.

RESPECTFULLY SUBMITTED:

Dated this 9th day of November, 2018.

Justin J. Schwarz, N.D. Bar I.D. # 05784
Assistant State's Attorney
Burleigh County
Courthouse, 514 East Thayer Avenue
Bismarck, ND 58501
(701) 222-6672
bc08@nd.gov
Attorney for Plaintiff-Appellee

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20180265 & 20180266
Burleigh County No.: 08-2015-CR-02250 & 08-2015-CR-3460

State of North Dakota,)
)
Plaintiff-Appellee,)
)
vs.)
)
Daniel Lynn Goldsack,)
)
Defendant-Appellant.)
STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

I, Katie A. Wangler, being first duly sworn, depose and say that I am a United States citizen over 21 years old, and on the 9th day of November, 2018, I deposited in a sealed envelope a true copy of the attached:

1. Brief of Plaintiff-Appellee

in the United States mail at Bismarck, North Dakota, postage prepaid, addressed to:

Russell J. Myhre
Attorney for Appellant
Myhre Law Office
PO Box 475
Valley City, ND 58072

which address is the last known address of the addressee.

Katie A. Wangler

Subscribed and sworn to before me this 9th day of November, 2018.

Notary Public,
Burleigh County, North Dakota.