
IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota,)	
)	Supreme Court File No.
)	20220315
Plaintiff and Appellee,)	
)	Ramsey County No.
)	36-2020-CR-00486
v.)	
)	
)	
Alvin Henry Brown, Jr.,)	APPELLANT'S BRIEF
)	
Defendant and Appellant.)	

**Appeal from the Order revoking probation entered
September 28, 2022 in Ramsey County district court,
Northeast Judicial District, North Dakota, the Honorable
Donovan Foughty presiding**

APPELLANT'S BRIEF
ORAL ARGUMENT REQUESTED

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JURISDICTION

[¶ 1] The Defendant, Alvin Henry Brown, Jr., timely appealed the Amended Criminal Judgment revoking probation and resentencing him arising out of the district court. Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. Pursuant to constitutional provision article VI § 6, the North Dakota legislature enacted Sections 29-28-03 and 29-28-06, N.D.C.C., which provides as follows:

“An appeal to the Supreme Court provided for in this chapter may be taken as a matter of right. N.D.C.C. § 29-28-03. An appeal may be taken by the defendant from:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for new trial; or
5. An order made after judgment affecting any substantial right of the party.”

N.D.C.C. § 29-28-06.

STATEMENT OF THE ISSUES

[¶ 2] I. Whether the district court abused its discretion when it improperly revoked Mr. Brown’s probation and resentenced him.

ORAL ARGUMENT

[¶ 3] Oral argument has been requested to emphasize and clarify the Appellant’s written arguments on their merits.

STATEMENT OF CASE

[¶ 4] This is a criminal matter on direct appeal from northeast judicial district, Ramsey County Criminal Judgment. This case was before the district court in *State v. Brown*, 36-2020-CR-00486. The criminal information was filed with the district court on August 18, 2020. R1. The Defendant was charged with two counts of endangerment of a child or vulnerable adult in violation of N.D.C.C. § 19-03.1-22.2, a class C Felony. The initial appearance was held on August 31, 2020. R49.

[¶ 5] Mr. Brown was represented by Attorney Ulysses Jones. On October 15, 2020, Mr. Brown waived his preliminary hearing and changed his plea in the present case. R14; R50:8.

[¶ 6] On July 18, 2022, a petition for revocation was filed. The district court found the Defendant violated the terms of his probation. The court ordered a modification to the probation conditions and continued Mr. Brown's supervised probation on August 4, 2022. R26; R52.

[¶ 7] Without filing a petition for revocation, a second probation revocation hearing was held on September 27, 2022. R53. The court stated that the allegations and factual findings from the August 4, 2022 revocation hearing would be used to support the second revocation. R53:3. Mr. Brown was resentenced to the DOCR. Mr. Brown timely appealed the court's Amended Criminal Judgment in this case. R40; R53:6.

STATEMENT OF FACTS

[¶ 8] On October 15, 2020, pursuant to a plea agreement, Mr. Brown was sentenced to five years with three years suspended for two years of supervised probation, and credit for 57 days previously served. R50.

[¶ 9] On October 4, 2022 a revocation hearing was held based on a petition for revocation filed by the State alleging five violations. R16; R52 The stipulated allegations were:

1. Mr. Brown did not report to probation and parole as directed,
2. he twice failed to attend treatment,
3. he used illegal substances,
4. he drank alcohol and was intoxicated, and
5. he left the Lake Region Reentry Center, an intermediate measure.

R16.

[¶ 10] Mr. Brown admitted to the allegations as they were set forth in the petition for revocation. R52:4-6. He requested that he be placed back onto probation. At the conclusion of the revocation hearing the district court ordered Mr. Brown back onto supervised probation and modified his probation by requiring SCRAM bracelet monitoring. R26:2; ¶5.

[¶ 11] Mr. Brown was arrested on a warrant after leaving treatment, Lake Region Reentry Center. R27; R28. The court ultimately revoked Mr. Brown's probation and resentenced him to five years with credit for two years and 22 days. R53:6.

LAW AND ARGUMENT

I. Whether the district court abused its discretion when it revoked probation without finding it was warranted.

Standard of Review

[¶ 12] This Court reviews the district court's decision to revoke probation with a two-part test. *State v. McAvoy*, 2007 ND 178, ¶ 7, 741 N.W.2d 198. In revocation of probation appeals, the Court reviews the district court's factual findings and then reviews the district court's decision to revoke probation. *Id.* citing *State v. Wardner*, 2006 ND 256, ¶ 17, 725 N.W.2d 215. This Court examines the district court's factual findings under the clearly erroneous standard, and then determine whether the district court abused its discretion when it decided revocation was warranted. *Id.* at ¶¶ 8, 17. A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, there is no evidence to support it, or this Court is convinced, on the basis of the entire record, that a mistake has been made. *Id.* at ¶ 8. A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination. *Id.* at ¶ 17.

[¶ 13] There was no petition to revoke currently pending before the trial court. There was no factual determination made by the trial court, during the September 27, 2022 revocation hearing no in its subsequent Order revoking and resentencing Mr. Brown.

[¶ 14] The Court further abused its discretion by not giving the Defendant proper notice of a pending revocation or the allegations against him. Proper notice requirements, required by N.D.C.C. § 12.1-32-7(6), were

not followed to revoke Mr. Brown's probation, which is a misapplication of the law and an abuse of discretion. Therefore, the district court made a reversible error when revoking and resentencing Mr. Brown contrary to the procedure set forth in N.D.C.C. § 12.1-32-7.

[¶ 15] The trial court further abused its discretion when it decided revocation was warranted. The Court in *State v. Bergstrom* incorporated the reasoning of N.D.R.Civ.P. 52(a) for criminal matters decided from the bench. *State v. Bergstrom*, 2006 ND 45, ¶ 15, 710 N.W.2d 407. *Bergstrom* explained that factual findings are sufficient "if they provide this Court with an understanding of the district court's factual basis used in reaching its determination. Lack of specificity alone does not make findings of fact erroneous." *Id.*

[¶ 16] The trial court made no factual findings on the record and there were no written findings of fact for this Court to properly review the decision of the district court. This error is a direct result of a second revocation proceeding that did not have a petition for revocation. It would be reversible error for the trial court to imply that the allegation in the bench warrant, filed August 29, 2022, sufficiently gave the defendant notice of the allegations supporting revoking his probation. A finding of fact is clearly erroneous if there is no evidence to support it, as is the case here. The Court did not revoke Mr. Brown's probation based on an active petition and the record is silent as to what current allegations required revocation. There is

no indication by the court as to why Mr. Brown was being sentenced to the balance of his suspended time, or how the court had authority to revoke his probation without a pending revocation petition. The record is devoid of all support for the district court's decision-making process, which is an abuse of discretion.

[¶ 17] It was an abuse of discretion for the court to simply revoke and resentence Mr. Brown with no factual findings as to why the revocation was warranted or even what were the pending allegations for revocation. There were no factual findings supporting the revocation in the written. Also, the transcript from the revocation is lacking any factual findings by the court to support the need for revocation, which is an abuse of discretion.

CONCLUSION

[¶ 18] The district court abused its discretion when it decided to revoke Mr. Brown's probation without appropriate notice, via a petition to revoke, and without considering if revocation would serve a corrective or rehabilitative purpose. The court's Order was, a misapplication of the law, specifically it did not comply with N.D.C.C. § 12.1-32-7.

[¶ 19] WHEREFORE the Defendant respectfully requests the Court to reverse the district court's order revoking Mr. Brown's probation.

Dated this 7th day of February 2023

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CERTIFICATE OF COMPLIANCE

[¶ 1] This Appellant's Brief complies with the page limit of 38 set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure.

Dated: February 7, 2023

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Alvin Henry Brown, Jr.,)	
)	CERTIFICATE OF SERVICE
Defendant and Appellant.)	

[¶ 1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

Appellant's Brief

And that said copies were served upon:

Beau Cummings, Ramsey County Assistant State's Attorney,
ramseysa@nd.gov

by electronically filing said documents through the court's electronic filing system. Also served upon:

Alvin Brown #60251, c/o NDSP, 3100 E Railroad Ave, Bismarck, ND
58506

by placing a true and correct copy of said items in a sealed envelope with USPS.

Dated: February 7, 2023

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