

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

FILED  
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April 12, 2012  
STATE OF NORTH DAKOTA

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The State of North Dakota,	)	Supreme Court No. 20110350
	)	and No. 20110351
Plaintiff and Appellee,	)	
	)	District Court No. 18-02-K-01572
vs.	)	and No. 18-02-K-01573
	)	
Juan DeLeon III,	)	
	)	
Defendant and Appellant.	)	

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ON APPEAL FROM REVOCATION OF PROBATION AND RESENTENCING  
FROM THE DISTRICT COURT  
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE JUDGE KAREN BRAATEN, PRESIDING.

**BRIEF OF APPELLEE**

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## **STATEMENT OF THE ISSUES**

- I. Whether the District Court's finding that the Defendant violated the conditions of supervised probation was clearly erroneous when the Defendant failed to actively participate in and successfully complete sexual offender treatment?**

## STATEMENT OF THE FACTS

[¶1] On February 12, 2003, the Defendant was sentenced in 18-02-K-1572 and 18-02-K-1573. (Appellee's App. at 1-8.) Each case contained one count of Class A Felony Gross Sexual Imposition. (Appellee's App. at 1-8.) The Defendant was placed on supervised probation in both cases. (Appellant's App. at 20-22.) A condition of his supervised probation was that he actively participate in, and successfully complete sex offender treatment, follow all program rules and requirements, and remain in such treatment at the direction of his probation officer. (Appellant's App. at 20-22.)

[¶2] On February 15, 2011, the State filed a Petition for Revocation of Probation in each case alleging four violations of the Defendant's conditions of probation. (Appellant's App. at 16 and 23.) On August 4, 2011, a probation revocation hearing was commenced. The State withdrew the first three allegations contained in the petition. Rev. Hearing Tr. pp. 3-7. The remaining allegation was that the Defendant failed to comply with sex offender treatment. (Appellant's App. at 16 and 23.) The Defendant denied that allegation. Rev. Hearing Tr. p. 19.

[¶3] Due to scheduling issues and time constraints, there were five separate hearings relating to the petitions to revoke probation. Hearings were held on August 4, 2011, September 13, 2011, October 17, 2011, November 4, 2011, and November 8, 2011. (Appellant's App. at 7.) The State presented testimony from Dr. Gregory, the Rule CPC treatment provider where the Defendant had been attending treatment, as well as Loralyn Waltz, the Defendant's probation officer. Additionally, the State offered three exhibits: 1) Non-compliance report dated January 18, 2011 (Appellant's App. at 33-34); 2) Letter from Henry Howe to Defendant and 3) ABEL Assessment. Rev. Hearing Tr. pp. 41-42,

311-312, 413-416. The Non-Compliance report from January 18, 2011 indicated that the defendant was non-compliant with treatment for engaging in continuous high risk behavior against treatment recommendations and for not providing the treatment provider honest, accurate information to inform treatment planning. (Appellant's App. at 33.) Further, the monthly progress reports and clinician assessments for the previous six months indicated that the Defendant was engaged in high risk behaviors for recidivism to include: resistant to treatment feedback; lack of progress in treatment and on treatment assignments; potential contact with victims; failure to successfully pass three consecutive polygraph examinations, increases in deviant arousal, on-going lack of honesty in treatment; and unlimited sexual objectification of all females. (Appellant's App. at 33.) Further, the report specifically notes that although the Defendant was in attendance at his scheduled appointments, he was dishonest about his own behavior and activities. (Appellant's App. at 33.) At the revocation hearing, the Defendant presented no testimony, however did introduce one exhibit, a letter to his treatment provider. Rev. Hearing Tr. pp. 204-209.

[¶4] Dr. Gregory testified that he was the Defendant's treatment provider at RULE CPC, which is a company that provides treatment to high risk sex offenders in a community setting on a contract basis. Rev. Hearing Tr. p. 21. Dr. Gregory testified as to his credentials and his background in specializing in the treatment of sex offenders. Rev. Hearing Tr. pp. 21-26. With respect to the Defendant, Dr. Gregory testified that he had been providing treatment to the Defendant since 2009 when Dr. Gregory became employed through Rule CPC. Rev. Hearing Tr. p. 35. The Defendant had been in treatment with Rule CPC since 2008. Rev. Hearing Tr. p. 35.

[¶5] Dr. Gregory explained the basic components of sex offender treatment, the type of therapy that is most effective for sex offenders, the fundamental components of treatment, tools, and assessments used on and for offenders, and the point system that RULE CPC utilized as one tool to track the level of performance, commitment, and growth within its treatment program. Rev. Hearing Tr. pp. 26-34, 40. Dr. Gregory indicated that the point system utilized by RULE CPC starts out at 0 (zero) and has a maximum of 100 (one hundred) points. Rev. Hearing Tr. p. 32. Dr. Gregory further testified that the beginner level of treatment is typically 0-30, and then it progresses to 30-50, 50-70, 70-85 and then 85 and above. Rev. Hearing Tr. p.33. Dr. Gregory indicated that after three years of treatment it would be expected that an individual is done with treatment and in the 91-100 point range. Rev. Hearing Tr. pp. 33-34. Dr. Gregory testified that while the Defendant had been in treatment since 2008, he was not progressing satisfactorily. Rev. Hearing Tr. pp. 36, 40. Dr. Gregory further testified that the Defendant was deemed non-compliant with treatment for failing to complete assignments, failing to be open and honest in treatment, failing to implement recommendations of treatment providers, compulsively masturbating and objectifying women, continuation of deviant thoughts and behaviors, and engaging in continuous high risk behavior against treatment recommendations, which included unsupervised contact with minor children. Rev. Hearing Tr. pp. 36-53. Dr. Gregory also testified that he did not believe the Defendant could be safely contained in the community at this time due to a lack of progress in sex offender treatment. Rev. Hearing Tr. p. 55. Dr. Gregory also testified that at the time of issuing the Non-Compliance Report the Defendant had only been able to achieve 53 points with Rule CPC, despite being at a point where he should

have completed the program. Rev. Hearing Tr. pp. 57, 227-228. Dr. Gregory reiterated that the point system with Rule CPC is one tool, but not a comprehensive tool, as to the Defendant's success in treatment. Rev. Hearing Tr. pp. 228-229. Dr. Gregory repeatedly testified the Defendant was not successful in treatment with Rule CPC, that he had concerns about potential recidivism, and that the Defendant could not safely be contained in the community. Rev. Hearing Tr. pp. 36-53, 225-239. Further, Dr. Gregory testified that the objectives for the Defendant had been made clear to him and yet he repeatedly failed to comply. Rev. Hearing Tr. pp. 54-55. The Non-Compliance report, which was issued to the Defendant and filed as an exhibit with the Court, further detailed and reiterated the Defendant's failure in sex offender treatment. (Appellant's App. at 33-34.)

[¶6] Loralyn Waltz, an employee of the North Dakota Department of Corrections for 20 years and the Defendant's probation officer, also testified. Rev. Hearing Tr. p. 293. Ms. Waltz reiterated Dr. Gregory's concerns regarding the Defendant's behaviors and lack of compliance with treatment and therefore probation. Ms. Waltz testified that the victims in the 18-02-K-1572 and 18-02-K-1573 were teenage females. Rev. Hearing Tr. p. 419. Ms. Waltz also testified that the Defendant, an adult male, continued to fantasize about females in his victims' age range and that it was concerning to her given his history of offending in the same age group. Rev. Hearing Tr. p. 419. Additionally, Ms. Waltz testified that the ABEL Assessment completed by the Defendant revealed 42 different victims that he offended against 100 times. Rev. Hearing Tr. pp. 416-417. Testimony was provided by Ms. Waltz that the Defendant's high risk behavior included unsupervised contact with minors, including a three year old female child who he



continued to fantasize about after having the unsupervised contact. Rev. Hearing Tr. 297. Ms. Waltz testified that the Defendant was placing himself in situations, contrary to the advice of probation and treatment, where he was having unsupervised contact with minors. Rev. Hearing Tr. pp. 296-300. Additionally, Ms. Waltz indicated that the Defendant had sexual fantasies about a dog at the Grand Forks Mission and may have been abusing it. Rev. Hearing Tr. p. 300. The Defendant failed to comply with GPS monitoring, continued to fantasize about a previous victim, continued to view sexually stimulating materials, and refused to comply with treatment. Rev. Hearing Tr. pp. 296-300. Ms. Waltz indicated that despite investing all of her resources and utilizing intermediate measures on the Defendant, he continued to engage in high risk behavior and refused to follow direction. Rev. Hearing Tr. p. 303. Ms. Waltz testified that the Defendant admitted to violating treatment conditions and probation. Rev. Hearing Tr. p. 303. Ms. Waltz indicated that it was her opinion that the Defendant was in violation of probation. Rev. Hearing Tr. p. 424.

[¶7] After four separate hearing dates for the adjudication phase of this case, a hearing was held on November 8, 2011 for the Court to make its findings. The Court found that the State met its burden of proof that the Defendant violation condition 20(d) (1) of Appendix A in 18-02-K-172 and 18-02-K-1573 by a preponderance of the evidence. Rev. Hearing Tr. pp. 466-467. A comprehensive written order to that effect was also filed. (Appellant's App. at 35-38.)

## ARGUMENT

**I. The District Court's finding that the Defendant violated the conditions of supervised probation was not clearly erroneous when the Defendant failed to actively participate in and successfully complete sex offender treatment as a condition of his supervised probation.**

[¶8] The district court's determination of whether the defendant violated his probation terms is a finding of fact. State v. McAvoy, 208 ND 204, ¶10, 757 N.W.2d 394; citing State v. Jacobsen, 2008 ND 52, ¶10, 746 N.W.2d 405. The State must prove a probation violation by a preponderance of the evidence. Id. at ¶11. The Court has explained preponderance of the evidence as whether a reasoning mind reasonably could have determined factual conclusions reached were proved by the weight of the evidence from the entire record. Id. at ¶11; citing Kraft v. State Bd. Of Nursing, 2001 ND 131, ¶21, 631 N.W.2d 572.

[¶9] Typically the review of a probation revocation is viewed in a two-step analysis; first with respect to whether the finding of a probation violation was clearly erroneous, and second whether the revocation was an abuse of discretion. McAvoy at ¶6; citing Jacobsen at ¶10. However, in the case at hand, the Defendant is only appealing the District Court's finding that he violated probation. A finding of fact is only clearly erroneous when it is induced by an erroneous view of the law, when there is no evidence to support it, or if, although there is some evidence to support it, on the entire evidence, the court is left with a definite and firm conviction that a mistake has been made. McAvoy, at ¶6; citing State v. Wardner, 2006 ND 256, ¶19, 725 N.W.2d 215.

[¶10] In the instant case, the State met its burden of proving a probation violation by a preponderance of the evidence, and the Court's finding that the

Defendant violated probation was not clearly erroneous. The Defendant is a high risk sex offender who has been in multiple different treatment programs since being sentenced in 2002. Rev. Hearing Tr. pp. 26-27, 295. The testimony was extensive and consistent by both Dr. Gregory and Lorilyn Waltz. Significantly, the Defendant was dishonest, failed to comply with treatment, and was no longer able to be contained within the community. Rev. Hearing Tr. pp. 26-75, 296-313. The Defendant, who perpetrated crimes against juvenile teenage girls, continues to fantasize about teenage girls, including his prior victim, as well as a three year old child. Rev. Hearing Tr. pp. 37-39, 297. Testimony was obtained that the Defendant excessively and obsessively objectifies women, animals, and inanimate objects. Rev. Hearing Tr. pp. 37-43. The Defendant continued to view sexually stimulating materials against treatment conditions. Rev. Hearing Tr. p. 43. Additionally, he is suspected to have engaged in inappropriate behavior with a dog at the place he was residing and admitted to sexually fantasizing about the dog. Rev. Hearing Tr. pp. 38, 53, 300. The Defendant refused to comply with treatment recommendations regarding masturbation and fantasies. Rev. Hearing Tr. pp. 36-75, 235-236. The Defendant placed himself in high risk situations, including having unsupervised contact with children. Rev. Hearing Tr. pp. 36-75, 296-300. Testimony was provided that honesty is a cornerstone of sex offender treatment and the Defendant was unable to comply with that very basic component of treatment. Rev. Hearing Tr. pp. 51, 73-74. While the Defendant attended treatment, he did not meaningfully or actively participate or complete required assignments in a timely manner or appropriate fashion. Rev. Hearing Tr.

pp. 99, 229-230; (Appellant's App. at 33-34). The Defendant had failed to appropriately progress in treatment. Rev. Hearing Tr. pp. 57, 227-228. The Defendant admitted to his probation officer that he had been dishonest, violated probation, and did not comply with treatment. Rev. Hearing Tr. p. 303. He also indicated he did not want to follow the rules any longer. Rev. Hearing Tr. p. 303. The Defendant repeatedly failed to comply with intermediate measures that were employed by his probation officer. Rev. Hearing Tr. pp. 303-304. As evidenced by the Non-Compliance Report filed by RULE CPC, the Defendant's lack of adequate progress in treatment combined with his high risk behavior, created great concerns that he was at risk to reoffend and no longer could be contained in the community. (Appellant's App. at 33-34.)

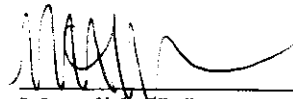
[¶11] The adjudication phase of the revocation hearing took place over four separate hearings. The court took extensive testimony from both Dr. Gregory, who has extensive experience treating sex offenders, and Loralyn Waltz, a twenty year veteran with the NDDOC who specializes in supervising sex offenders. Both witnesses testified directly that the Defendant was dishonest and noncompliant with treatment. While the Defendant alleges that he was doing well in treatment as evidenced by his scores on his monthly progress reports, this statement is contradicted by Dr. Gregory's testimony that he was nowhere near where he should have been at that time. Rev. Hearing Tr. pp. 40, 57, 227-228. Further, Dr. Gregory testified that the point system is one tool to determine someone's progress but that subjective assessments are done by the treatment provider as well. Rev. Hearing Tr. p. 229. Dr. Gregory indicated that the

Defendant was not progressing in treatment and had not appropriately complied with his assignments. Rev. Hearing Tr. pp. 40, 57, 227-228. The evidence and testimony presented provides the basis for the petition to revoke the Defendant's probation; the Defendant's noncompliance with treatment and continuous engagement in high risk behaviors. The Court's findings reflected the testimony and evidence presented. (Appellant's App. at 35-38.) The evidence and testimony was proven by a preponderance of the evidence. The Court's finding that the Defendant violated probation was not clearly erroneous based on the extensive testimony establishing the fact that the Defendant failed to actively participate in and successfully complete sex offender treatment as required in the conditions of his supervised probation.

**CONCLUSION**

[¶12] Therefore, the State respectfully requests this Court deny the Defendant's appeal and affirm the District Court's finding that the Defendant violated probation.

DATED this 12 day of April, 2012.



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