

IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

State of North Dakota,)	
)	Supreme Court No.: 20190148
Plaintiff and Appellee,)	District Court No.: 36-2014-CR-238
)	
v.)	
)	
John Allen Dubois,)	
)	
Defendant and Appellant.)	
)	

Appeal from the Order Revoking Probation entered April 25, 2019, in Ramsey County, District Court, Northeast Judicial District, North Dakota, the Honorable Donovan Foughty presiding.

BRIEF OF THE APPELLEE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF THE ISSUE.....	¶1
STATEMENT OF THE CASE.....	¶2
STATEMENT OF THE FACTS.....	¶3
STATEMENT OF THE STANDARD OF REVIEW... ..	¶6
LAW AND ARGUMENT	¶7
CONCLUSION.....	¶12

TABLE OF AUTHORITIES

Cases

State v. Causer, 2004 ND 75, 678 N.W.2d 552 ¶7, 10
State v. Wardner, 2006 ND 256, 725 N.W.2d 215 ¶9

North Dakota Constitution

N.D.Const. art. VI §6 ¶7

Statutes

N.D. Cent. Code § 29-28-03 ¶7
N.D. Cent. Code § 29-28-06 ¶7
N.D. Cent. Code §12.1-32-07 ¶11

Transcript References:

The hearing on the Defendant’s revocation of probation was conducted April 18, 2019.
The transcript of the hearing is referred to as [Tr.] in this brief.

ISSUE PRESENTED

[¶1] I. The district court properly revoked the probation of John Dubois.

STATEMENT OF THE CASE

[¶2] The State adopts Mr. Dubois's Statement of the Case.

STATEMENT OF THE FACTS

[¶3] On March 15, 2015, Mr. Dubois pled guilty to Burglary and pursuant to a plea agreement was sentenced to confinement with the Department of Corrections for a term of five (5) years in prison, first to serve two (2) years, credit for 234 days, and the remainder suspended for three (3) years of supervised probation upon his release. Appellant's App. at 10. Mr. Dubois's conditions of probation were outlined in the Appendix A. Appellee's App. at 3-6.

[¶4] On April 18, 2019, a revocation of probation hearing was held. The allegations admitted to by Mr. Dubois included a violation of conditions 1 and 9 of the Appendix A. Tr. pp. 4-6. The State recommended a revocation of Mr. Dubois's probation with a straight sentence to the Department of Corrections. Tr. pp. 23. Mr. Dubois requested he be placed back on probation to pursue treatment, employment and other things. Tr. pp. 15-17.

[¶5] The district court revoked Mr. Dubois's probation and resentenced him to five (5) years at the Department of Corrections, less time served. Tr. pp. 25.

STATEMENT OF THE STANDARD OF REVIEW

[¶6] The State hereby incorporates Mr. Dubois's Standard of Review.

LAW AND ARGUMENT

[¶7] This is an appeal of a criminal judgment entered after a probation revocation hearing. (Appellant's App. at 18). This Court has jurisdiction over this appeal under N.D. Const. art. VI § 6, N.D.C.C. § 29-28-03 and N.D.C.C. § 29-28-06. A criminal defendant's statutory right to appeal also includes the right to appeal after a probation revocation hearing. State v. Causer, 2004 ND 75, ¶ 23, 678 N.W.2d 552.

[¶8] As noted by Mr. Dubois, he admitted to the violation of conditions 1 and 9 of his terms of probation and the only issue before this Court is whether the district court abused its discretion upon revoking Mr. Dubois's probation.

[¶9] Discretion is abused by a district court when "it acts in an arbitrary, unreasonable, unconscionable, or capricious manner, or if its decision is not the product of a rational mental process leading to a reasoned determination, or if it misinterprets or misapplies the law." State v. Wardner, 2006 ND 256, ¶ 26, 725 N.W.2d 215 at 225. (citations omitted).

[¶10] The district court has sole discretion to admit and consider any evidence during probation revocation hearings. State v. Causer, 2004 ND 75, ¶35, 678 N.W.2d 552 at 562. (citation omitted). The weight of that evidence is within the sound discretion of the trial court. Id. In this matter, the district court considered several factors in determining whether to revoke Mr. Dubois's probation, including but not limited to the testimony of the probation officer and Mr. Dubois, his new criminal convictions, his failure to

maintain contact with his probation officer. The court elucidated Mr. Dubois from a time standpoint, would be better off with a straight sentence; have better access to programming in the Department of Corrections than in the community. Tr. pp. 24. The court had a dialogue with Mr. Dubois, explaining the court's view of Mr. Dubois as impulsive and unable to complete programming on his own. Tr. pp. 24-25.

[¶11] Under N.D.C.C. § 12.1-32-07(6), a trial court is authorized to resentence a defendant who violates a condition of probation to any sentence initially available. The district court was cognizant of all sentencing options available and made its decision accordingly.

CONCLUSION

[¶12] The district court did not abuse its discretion when it decided to revoke Mr. Dubois's probation. The district court's decision was the product of a rational mental process leading to a reasoned determination that was in accordance with the law. The State respectfully requests this Court affirm the district court's order revoking Mr. Dubois's probation.

Respectively submitted on September 10, 2019.

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John Allen Dubois,)	
)	CERTIFICATE OF COMPLIANCE
Defendant and Appellant.)	
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[¶1] This Appellee’s Brief and Appendix complies with the page limit of 38 set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure as it has 6 pages.

Dated this 10th day of September, 2019.

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[¶1] I certify I provided an electronic copy of the Appellee’s Brief, Appellee’s Appendix, Certificate of Compliance, Certificate of Service, to counsel for the Appellant via electronic delivery to:

service@kpmwlaw.com

Dated this 10th day of September, 2019.

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