IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42077

STATE OF IDAHO,	)	**2015 Unpublished Opinion No. 393**
	)	
Plaintiff-Respondent,	)	**Filed: March 5, 2015**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
CHARLES ALLEN VAUGHN, JR.,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Order denying motion to modify no-contact order, affirmed.

Charles Allen Vaughn, Jr., Steinhatcher, Florida, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

GUTIERREZ, Judge

Charles Allen Vaughn, Jr. appeals from the district court's order denying his fifth motion to modify a no-contact order entered against him. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

This Court has set forth the facts of the underlying case on several occasions in previous appeals pursued by Vaughn:

> The issues presented in the current appeal originate from a domestic battery Vaughn committed against his wife, T.V. The 911 call from T.V. recorded most of the confrontation. During the episode, Vaughn pushed T.V. onto the bed and strangled her. As T.V. struggled, Vaughn grabbed her by the hair and hit her in the face. When T.V.'s eight-year-old son tried to help her, Vaughn dragged him by the neck and arm and threw him onto the bed also. Vaughn then picked up a pillowcase and told the boy, "I'm going to kill you." During the altercation, Vaughn accused T.V. of sleeping around and using drugs. Throughout the recording, children can be heard screaming and crying in the

> background. Responding officers not only saw evidence of injury on both T.V. and her son, but also found OxyContin and methamphetamine at the home.
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> Vaughn was charged with attempted strangulation, Idaho Code § 18-923; domestic violence in the presence of children, I.C. §§ 18-903, 18-918; and two counts of possession of a controlled substance, I.C. § 37-2732(c)(1). The information was later amended to add misdemeanor injury to a child, I.C. § 18-1501(2), and resisting and obstructing officers, I.C. § 18-705. A no-contact order (NCO) was issued prohibiting Vaughn from contacting his children or T.V. In spite of the NCO, Vaughn was adamant about getting in touch with T.V. and his children. In a telephone conversation, Vaughn asked his parents to persuade T.V. not to testify at trial. He also sent letters to his parents to be forwarded to T.V. He sent letters to T.V.'s address "C/O Charles Vaughn," and contacted the family members of other inmates, asking them to "keep an eye on" T.V. He even contacted a sixteen-year-old girl from T.V.'s neighborhood, seeking to have her spy on T.V. and the children.
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> Eventually, a plea agreement was reached whereby Vaughn agreed to plead guilty to domestic battery in the presence of children, and the State agreed not to pursue a charge of witness intimidation and to dismiss the drug possession charges and charges for attempted strangulation, resisting and obstructing officers, and injury to children.
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> The court ordered mental health and domestic violence evaluations. The mental health assessment found that Vaughn had anger problems and was mad that he could not get back with his wife. The mental health assessment also found that Vaughn was polysubstance dependent and had a depressive disorder and a personality disorder with antisocial and histrionic features. Vaughn was assessed as a moderate to high risk to reoffend.
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> The domestic violence evaluation found that Vaughn was impulsive and lacked control over his aggressive impulses. It noted that he superficially expressed remorse but appeared to be "more focused on gaining positive recommendations rather than experiencing remorse about the . . . violence toward his wife and his children." The assessment also noted that Vaughn minimized his violence toward his entire family in the current incident as well as his past violence, and that "Vaughn's profile suggests that he is an extremely high risk for domestic violence as well as for violence towards members of the community at large."
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> On December 30, 2009, Vaughn was sentenced to a twenty-year term of imprisonment with five years fixed. On the same date, the court entered a new NCO prohibiting Vaughn from any contact with T.V. or with certain of his children and stepchildren [including W.V.] until December 30, 2029. The court also noted that the NCO's protection of Vaughn's biological daughter [W.V.] was necessary because he had made specific threats against her.

State v. Vaughn, Docket No. 41599 (Ct. App. July 17, 2014) (unpublished) (quoting *State v. Vaughn*, Docket Nos. 39526/40237 (Ct. App. Sept. 5, 2013) (unpublished)).

Vaughn filed numerous motions to modify the NCO over the years, at various times requesting to have contact with T.V., his children and stepchildren, and just W.V. Each time the district court denied the motions and this Court affirmed when Vaughn appealed. Vaughn's parental rights to W.V. were terminated by a magistrate's decree, which this Court affirmed in 2013. In March 2014, Vaughn filed the pro se motion to modify the NCO which is at issue in this appeal, requesting that he be allowed written and/or phone contact with W.V. In support of his motion, Vaughn stated that he had not violated the NCO since September 2010, had "complete[d] many classes and programs after Sept. 2010" and had a tentative parole date with a condition that he not have contact with any of the victims. He also asked that the court put in place "some kind of plan that he could work to earn back the contact he has lost with his daughter." After a hearing, the district court denied the motion. Vaughn now appeals.

II.

ANALYSIS

The decision whether to modify a no-contact order is within the sound discretion of the district court. *State v. Cobler*, 148 Idaho 769, 771, 229 P.3d 374, 376 (2010). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

In its written decision denying Vaughn's motion to modify the NCO, the district court set forth the "disturbing" facts of the underlying crime and discussed Vaughn's extensive criminal history, the evaluators' assessments prior to sentencing that Vaughn was a high risk to reoffend, and Vaughn's "continued poor behavior" while incarcerated, including continuing to violate the NCO. "Clearly," the court opined, its "assessment at the time of sentencing was correct."

In his brief to this Court, Vaughn listed four ways in which, he argued, the district court abused its discretion in denying his motion: (1) cutting him off at the hearing and not allowing him to recount the history of the case; (2) not taking into account the exhibits submitted by Vaughn showing his accomplishments while incarcerated or the fact he had completed the requirements for parole and had been granted a tentative parole date of June 2014; (3) failing to

provide him with a plan to follow in order to allow for reinstatement of contact with W.V.; and (4) relying on the fact that Vaughn's parental rights to W.V. had been terminated as the primary reason for denying the motion to modify despite the fact that he had explained to the court that his purpose behind requesting the modification to be able to respond to W.V. "years down the line when and if she tried to contact him." In regard to the latter argument, he also contended the district court should not have considered that W.V. had since been adopted because those proceedings were sealed.

Vaughn's contention that the district court abused its discretion by not allowing him to review the history of the case at the hearing is without merit.[1] He cites no authority for the proposition that he was entitled to present argument to the court without interruption or limitation, and therefore we do not address it further. *See State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) (holding that a party waives an issue on appeal if either authority or argument is lacking).

Vaughn's contention that the district court abused its discretion by not setting forth a plan in order to reinstate contact is also without merit. Again, he cites no authority for the proposition that the district court was required to do so. *See id.*

Vaughn's two remaining arguments are that the district court did not take into account certain factors which Vaughn believed were relevant (his completion of programs in prison and imminent release on parole) and that it improperly relied on a factor (W.V.'s adoption) in making its determination.[2] As the district court articulated in its written decision, it considered the violent nature of Vaughn's underlying crimes, his lengthy criminal history, repeated

[1] As the State points out, a transcript of the hearing is not included in the record on appeal because Vaughn did not pay the fee for preparation of the transcript or obtain an order from the district court waiving the fee. This raises the question of whether we may even address this issue given that an appellant bears the burden of providing an adequate record to substantiate his claims of error. *See State v. Beck*, 128 Idaho 416, 422, 913 P.2d 1186, 1192 (Ct. App. 1996). However, for the purposes of this appeal we will assume the record is sufficient since the minutes of the hearing included in the record indicate that after Vaughn began his argument, the district court advised him that he did not "need to go over the history" since the court was "very familiar with th[e] case and ha[d] read everything."

[2] The district court did not mention the termination of Vaughn's parental rights or W.V.'s adoption in its written decision denying the motion. However, the court minutes of the hearing indicate that immediately prior to orally denying the motion, the district court noted that "Parental rights have been terminated; the child has been adopted."

violations of the no-contact order, and disciplinary problems while incarcerated in determining that modification was not appropriate. That the district court did not weigh the factors in the manner Vaughn desires does not demonstrate an abuse of discretion. Further, that Vaughn no longer had parental rights as to W.V. was certainly a relevant and appropriate consideration, a premise for which Vaughn does not cite any authority holding otherwise. Given the district court's reasoned decision, well within the confines of its discretion and consistent with applicable legal standards, Vaughn has not shown the district court abused its discretion in this instance. The district court's denial of Vaughn's motion to modify the no-contact order is affirmed.

Chief Judge MELANSON and Judge GRATTON **CONCUR**.