

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46299

STATE OF IDAHO,)
) Filed: July 16, 2019
Plaintiff-Respondent,)
) Karel A. Lehrman, Clerk
v.)
) THIS IS AN UNPUBLISHED
JON G. PEDERSEN,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
Defendant-Appellant.)
_____)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Lincoln County. Hon. John K. Butler, District Judge.

Order revoking probation and executing reduced sentence, reversed; and case remanded.

Eric D. Fredericksen, State Appellate Public Defender; Andrea W. Reynolds, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for respondent.

Before HUSKEY Judge; LORELLO, Judge;
and BRAILSFORD, Judge

PER CURIAM

Jon G. Pedersen appeals from the district court’s order revoking his probation and executing a reduced sentence. Because Pedersen was not competent during the probation revocation proceedings, we reverse the order revoking probation and executing reduced sentence and remand the case for further proceedings consistent with this opinion.

In 2013, 66-year-old Pedersen pleaded guilty to one count of felony driving under the influence. He was sentenced to a unified term of ten years, with ten years determinate, and the district court retained jurisdiction. After successfully completing the period of retained jurisdiction, Pedersen was placed on probation. Approximately three years later, the Idaho

Department of Correction filed a motion to have Pedersen discharged from probation because Pedersen had complied with and satisfactorily completed the terms of probation; the district court denied the motion. Later that same year, the State filed an allegation of probation violation for consuming alcohol. Pedersen admitted the violation. The district court revoked Pedersen's probation, re-imposed the original sentence, and continued Pedersen on probation until 2022.

In 2018, the State filed an agent's warrant of arrest, alleging that Pedersen violated his probation by consuming alcohol. By this time, Pedersen was approximately 72 years old and suffering from a progressive, degenerative neurocognitive disorder. A "no-bond" warrant was issued and Pedersen was arrested pursuant to that warrant. Pedersen's attorney filed for a competency evaluation pursuant to Idaho Code § 18-211, which the district court granted. The results of the evaluation indicated that because of Pedersen's neurocognitive disorder, he could not remember talking to his attorney and therefore, Pedersen did not know if he understood what the attorney was saying; could not articulate his legal rights or provide reliable or accurate information; was not capable of testifying; and could not process information. The evaluation ultimately concluded that Pedersen lacked the capacity to understand the proceedings against him and that he could not assist in his own defense. In short, the evaluation found Pedersen was not competent to proceed and it was unlikely Pedersen would become competent in the future given the progressive nature of his disorder.

The district court was aware of the results of the I.C. § 18-211 evaluation at the time of the probation violation evidentiary hearing. At the hearing, Pedersen's counsel objected to proceeding with the evidentiary hearing, asserting that proceeding while Pedersen was incompetent violated Pedersen's constitutional right to due process. The district court overruled the objection and held the hearing. The district court found Pedersen violated his probation. The district court revoked probation and executed a reduced sentence. Pedersen timely appeals.

Where a defendant claims that his or her right to due process was violated, we defer to the trial court's findings of fact, if supported by substantial evidence. *State v. Smith*, 135 Idaho 712, 720, 23 P.3d 786, 794 (Ct. App. 2001). However, we freely review the application of constitutional principles to those facts found. *Id.* Over questions of law, we exercise free review. *State v. O'Neill*, 118 Idaho 244, 245, 796 P.2d 121, 122 (1990).

Pedersen argues that it violates due process to subject an incompetent probationer to probation revocation proceedings; the State agrees. However, the parties disagree on the

appropriate remedy. Pedersen asserts this Court should order the district court to place him on probation. The State argues the case should be remanded to the district court for application of the correct legal standard and further proceedings consistent with that standard. In light of the parties' agreement that there was a due process violation, this Court reverses the order revoking probation and executing reduced sentence and remands this case to the district court for further proceedings consistent with this opinion. This Court declines to direct the district court to proceed upon a specific course of action.

The order revoking probation and executing reduced sentence is reversed and the case is remanded for further proceedings consistent with this opinion.