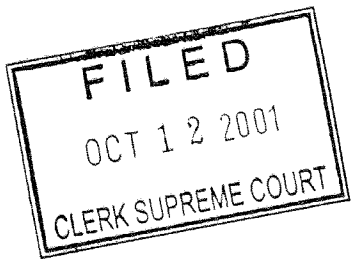
IN THE COURT OF APPEALS OF IOWA

No. 1-520 / 00-0986
Filed October 12, 2001



JESSE ARCHIBALD,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Audubon County, James S. Heckerman, Judge.

On appeal from the denial of his application for postconviction relief, the appellant argues the district court exceeded its authority in sustaining the State's motion to dismiss and it improperly failed to consider the illegality of the order revoking his probation. **AFFIRMED.**

John M. Trewet of Rutherford, Trewet & Knuth, Atlantic, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, and Francine O'Brien Andersen, County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

Applicant appellant Jesse Archibald appeals the district court's dismissal of his application for postconviction relief after the district court revoked his probation and reinstated his original sentence. Defendant claims in this appeal for postconviction relief that the State's motion to dismiss his application was supported only by the same inconclusive hearsay evidence which he claimed in his application for postconviction relief was insufficient to support reinstatement of his sentence. We affirm.

Following an incident in which defendant was an accomplice to the assault of victim Jason Schwenneker, defendant pled guilty to 1) assault with intent to commit serious injury, in violation of Iowa Code sections 708.1 and 708.2(1); and 2) harassment in the first degree, in violation of Iowa Code section 708.7(2). On August 4, 1997, following his guilty plea, defendant received a sentence of two consecutive two-year terms. His sentence was suspended, and defendant was placed on probation for one year. He was ordered to obtain an alcohol/drug evaluation, follow any treatment recommended in that evaluation, and abstain from the use of alcohol or drugs during his probationary period.

Due to defendant's admitted probation violations, the State applied for revocation of defendant's suspended sentence in May of 1998, May of 1999, and January of 2000. In response to the first two applications, the court extended defendant's probationary period, first to June 1, 1999, and then to December 31, 2000. In response to the third application, which was supported by two documents evidencing defendant's probation violations, the district court revoked

defendant's probation and reinstated the sentence. Defendant's application for postconviction relief was later denied by the district court.

In order to appeal a probation revocation, a defendant must apply for postconviction relief. *State v. Allen,* 402 N.W.2d 438, 441 (Iowa 1987). Our review of postconviction proceedings is for errors at law. *Collins v. State,* 588 N.W.2d 399, 401 (Iowa 1998).

Defendant claims that the evidence relied upon by the district court to dismiss his application for postconviction relief was the very same evidence he claimed in his application was too unreliable to substantiate the reinstatement of his sentence. For this reason defendant claims the dismissal of his application was an error at law.

Probation revocation proceedings are informal. *State v. Calvert,* 310 N.W.2d 185, 187 (Iowa 1981). The rules of evidence are not strictly applied at these probation revocation proceedings. *State v. Hughes,* 200 N.W.2d 559, 563 (Iowa 1972). When hearsay is admitted, revocation does not constitute an abuse of discretion if the fact of the violation is established by evidence which is competent. *Id.* at 563. Furthermore, the Iowa Rules of Evidence, which contain the traditional hearsay ban, expressly do not cover probation revocation proceedings. Iowa R. Evid. 1101(c)(4). However, the decision to revoke probation must nevertheless be based upon competent and reliable evidence. *Hughes,* 200 N.W.2d at 563.

We agree with the district court that competent and reliable evidence did exist to support the revocation of defendant's probation and the reinstatement of his sentence. In revoking the defendant's probation, the State relied upon only

two documents, both of which were introduced without a foundation, and both of which qualified as hearsay. These documents were 1) a Violation Report to the Court by the Department of Correctional Services and 2) a Revocation Hearing Decision Notice by a Correctional Services Representative.

In this case the only evidence introduced to support the revocation was hearsay. The question we are faced with is whether hearsay can support a probation revocation. In *Hughes,* 200 N.W. 2d at 563, and *State v. Farmer,* 234 N.W.2d 89, 91 (Iowa 1975), we find that when hearsay is admitted, revocation does not constitute an abuse of discretion if the fact of the violation is established by competent evidence, which in those cases included additional non-hearsay evidence, including testimony. The Indiana Supreme Court recently addressed this issue in *Cox v. State,* 706 N.E.2d 547, 552 (Ind. 1999), and found hearsay could be reliable evidence sufficient to sustain a probation revocation. In that case the director of a work release center, whose knowledge was based on a hospital lab report introduced without a foundation, testified that defendant had tested positive for marijuana. *Cox.* 706 N.W.2d at 548, 552. The court upheld the probation revocation. *Id.* at 548.

There was no testimony or additional formal evidence in this case attesting to the reliability of the hearsay documents. However, because the rules of evidence do not strictly apply, we find that in order to challenge the reliability of the documents, defendant needed to point to some indicia of their unreliability beyond simply stating, "hearsay" and, "lack of foundation." These documents are likely reliable: they appear to be standard Department of Corrections documents, and, apart from merely generalized claims of their defectiveness, their content is

uncontradicted by defendant. *See United States v. Bell,* 785 F.2d 640, 643 (8th Cir. 1986). Further, defendant stated at the hearing that he had a drinking problem and that he wanted to get help, thereby supporting statements in the offered exhibits evidencing defendant's continuing use of alcohol. Further still, defendant's own attorney adopted Exhibit 2, the Revocation Hearing Decision Notice, in pleading for a lighter sentence for defendant. The attorney referred to Exhibit 2 as proof of his statement that defendant would already be serving five years in prison for an OWI conviction occurring during the probationary period. Drinking, with or without driving, is a violation of defendant's probation in this case. As defendant and his attorney did, we adopt Exhibit 2 as well. A conviction for OWI more than substantiates the revocation of defendant's probation.

AFFIRMED.