

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 41298

STATE OF IDAHO,)	2014 Unpublished Opinion No. 545
)	
Plaintiff-Respondent,)	Filed: June 4, 2014
)	
v.)	Stephen W. Kenyon, Clerk
)	
STEVEN GILBERT KORELL,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Darren B. Simpson, District Judge.

Order revoking probation and requiring execution of unified ten-year sentence with two-year determinate term for felony driving under the influence, subsequently suspended upon grant of probation, affirmed.

Sara B. Thomas, State Appellate Public Defender; Shawn F. Wilkerson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Judge; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

Steven Gilbert Korell pled guilty to felony driving under the influence. Idaho Code §§ 18-8004, 18-8005(6), 18-8008. The district court sentenced Korell to a unified term of ten years with two years determinate, suspended the sentence, and placed Korell on supervised probation for five years with the condition that he apply to a problem solving court. Approximately one year later, Korell admitted to violating the terms of his probation. The district court continued his supervised probation on the condition that he complete the Wood Pilot Project Court. Korell’s probation officer filed a second report of violation and Korell subsequently absconded supervision. Korell was later arrested and he admitted to violating the

terms of his probation. The district court revoked his probation, ordered the underlying sentence executed, and retained jurisdiction. Korell filed an Idaho Criminal Rule 35 motion for reduction of sentence, which was denied by the district court. Following the period of retained jurisdiction, the district court suspended Korell's sentence and again placed him on supervised probation for a period of four years. Korell appeals, "mindful of the fact he is currently on probation," asserting that the district court abused its discretion by not sua sponte reducing his sentence upon revocation of his probation.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). The court may also order a period of retained jurisdiction. *State v. Urrabazo*, 150 Idaho 158, 162, 244 P.3d 1244, 1248 (2010). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 325, 834 P.2d at 327. In reviewing the propriety of a probation revocation, the focus of the inquiry is the conduct underlying the trial court's decision to revoke probation. *State v. Morgan*, 153 Idaho 618, 621, 288 P.3d 835, 838 (Ct. App. 2012). Thus, this Court will consider the elements of the record before the trial court relevant to the revocation of probation issues which are properly made part of the record on appeal. *Id.*

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

When we review a sentence that is ordered into execution following a period of probation, we will examine the entire record encompassing events before and after the original judgment. *State v. Hanington*, 148 Idaho 26, 29, 218 P.3d 5, 8 (Ct. App. 2009). We base our review upon the facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of the probation. *Id.* Thus, this Court will consider the elements of the record before the trial court that are properly made part of the record on appeal and are relevant to the defendant's contention that the trial court should have reduced the sentence sua sponte upon revocation of probation. *Morgan*, 153 Idaho at 621, 288 P.3d at 838.

Applying the foregoing standards, and assuming Korell can challenge the district court's failure to sua sponte reduce his sentence, we cannot say that the district court abused its discretion either in revoking probation or in ordering execution of Korell's original sentence without modification. Therefore, the order revoking probation and directing execution of Korell's sentence, suspended upon subsequent grant of probation, is affirmed.