

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 41709

STATE OF IDAHO,) 2015 Unpublished Opinion No. 313
)
 Plaintiff-Respondent,) Filed: January 20, 2015
)
 v.) Stephen W. Kenyon, Clerk
)
 JILL EDWARDS,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
 Defendant-Appellant.) BE CITED AS AUTHORITY
)
 _____)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Juneal C. Kerrick, District Judge.

Order revoking probation, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Brian R. Dickson, Deputy Appellate Public Defender, Boise, for appellant.

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

Before MELANSON, Chief Judge; LANSING, Judge;
and GUTIERREZ, Judge

PER CURIAM

Jill Edwards was convicted of grand theft by false promise, Idaho Code §§ 18-2403(2)(d), 18-2407(1)(b). The district court imposed a unified six-year sentence with a two-year determinate term to run concurrently with a separate Ada County case, suspended the sentence, and placed Edwards on probation for five years. Edwards' probation was suspended, however, while she completed her period of retained jurisdiction in the Ada County case. Subsequently, Edwards admitted to violating the terms of the probation, and the district court consequently revoked and reinstated Edwards' probation, adding a three-year extension.

Following an additional probation violation, the district court revoked Edwards' probation and ordered execution of her underlying sentence. Edwards filed an Idaho Criminal Rule 35 motion for reduction of sentence which the district court denied. Edwards appeals, contending that the district court abused its discretion in revoking probation and in denying her Rule 35 motion.

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.*

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740

P.2d 63, 64 (Ct. App. 1987); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in denying Edwards' Rule 35 motion. Therefore, the order revoking probation and directing execution of Edwards' previously suspended sentence and the order denying Edwards' Rule 35 motion are affirmed.