

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44218

STATE OF IDAHO, ) 2016 Unpublished Opinion No. 802  
 )  
Plaintiff-Respondent, ) Filed: December 2, 2016  
 )  
v. ) Stephen W. Kenyon, Clerk  
 )  
PATRICK ADAM THOMETZ, ) THIS IS AN UNPUBLISHED  
 ) OPINION AND SHALL NOT  
Defendant-Appellant. ) BE CITED AS AUTHORITY  
 )  
\_\_\_\_\_ )

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

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

Eric D. Fredericksen, State Appellate Public Defender; Jenny C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

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

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Before MELANSON, Chief Judge; GUTIERREZ, Judge;  
and GRATTON, Judge  
\_\_\_\_\_

PER CURIAM

Patrick Adam Thometz pled guilty to felony driving under the influence. Idaho Code §§ 18-8004, 18-8005(6). The district court sentenced Thometz to a unified term of ten years with three years determinate, ordered that the sentence in this case run consecutively to Thometz's sentence in an unrelated case, and retained jurisdiction. Following the period of retained jurisdiction, the district court suspended the sentence and placed Thometz on supervised probation for a period of five years. Subsequently, Thometz admitted to violating the terms of the probation, and the district court consequently revoked probation, ordered execution of the

original sentence, and retained jurisdiction a second time. Following the second period of retained jurisdiction, the district court suspended Thometz's sentence and placed him on supervised probation for three years. A few months later Thometz admitted to again violating the terms of the probation, and the district court revoked Thometz's probation and ordered executed a reduced unified sentence of ten years with two years determinate. In addition, the district court ordered that the sentence in this case run concurrently with the sentence in the unrelated matter. Thometz appeals asserting that the district court abused its discretion by revoking 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.*

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in revoking probation. Therefore, the order revoking probation and directing execution of Thometz's reduced sentence is affirmed.