

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 44457/44458

STATE OF IDAHO,) 2017 Unpublished Opinion No. 347
)
Plaintiff-Respondent,) Filed: February 2, 2017
)
v.) Stephen W. Kenyon, Clerk
)
KIRK ERIC BIRKINBINE,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Deborah A. Bail, District Judge.

Orders revoking probation, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Erik R. Lehtinen, Deputy Appellate Public Defender, Boise, for appellant.

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

Before GUTIERREZ, Judge; MELANSON, Judge;
and HUSKEY, Judge

PER CURIAM

In cases consolidated on appeal, Kirk Eric Birkinbine pled guilty to possession of methadone, Idaho Code § 37-2732(c), and possession of methamphetamine, I.C. § 37-2732(c). The district court imposed concurrent unified sentences of seven years with two years determinate, but after a period of retained jurisdiction, suspended the sentences and placed Birkinbine on probation. Subsequently, Birkinbine admitted to violating the terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentences. Birkinbine appeals, contending that the district court abused its discretion in failing to retain jurisdiction upon revoking probation.

The primary purpose of the retained jurisdiction program is to enable the trial court to obtain additional information regarding the defendant's rehabilitative potential and suitability for probation, and probation is the ultimate objective of a defendant who is on retained jurisdiction. *State v. Chapel*, 107 Idaho 193, 687 P.2d 583 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). There can be no abuse of discretion in a trial court's refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *State v. Beebe*, 113 Idaho 977, 979, 751 P.2d 673, 675 (Ct. App. 1988); *Toohill*, 103 Idaho at 567, 650 P.2d at 709. Based upon the information that was before the district court at the time of sentencing, we hold that the district court did not abuse its discretion when it declined to retain jurisdiction in this case.

Therefore, the orders revoking probation and directing execution of Birkinbine's previously suspended sentences are affirmed.