

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 44809, 44810 & 44811

STATE OF IDAHO,)	2017 Unpublished Opinion No. 586
)	
Plaintiff-Respondent,)	Filed: September 18, 2017
)	
v.)	Karel A. Lehrman, Clerk
)	
LEVI WESLEY COLE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Cynthia K. C. Meyer, District Judge.

Order revoking probation and judgments of conviction, 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.

Before GRATTON, Chief Judge; GUTIERREZ, Judge;
and HUSKEY, Judge

PER CURIAM

Levi Wesley Cole entered an *Alford*¹ plea to felony domestic battery, I.C. § 18-903, -918(3)(c), (4). The district court sentenced Cole to a unified seven-year sentence, with three years determinate, but after a period of retained jurisdiction, suspended the sentence. Following the rider, Cole was placed on probation. Approximately four months later, Cole was charged with felony attempted strangulation, I.C. § 18-923, felony domestic battery with traumatic injury, I.C. §§ 18-903, 918 (3)(c), and misdemeanor assault, I.C. § 18-901. Next, Cole was charged with three counts of intimidation of a witness, I.C. § 18-2604(c), and three counts of violation of a no contact order, I.C. § 18-920(3). Pursuant to a plea agreement, Cole admitted

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

violating the terms of his probation in the first case and pled guilty to felony domestic violence with traumatic injury, one count of intimidation of a witness, and one count of violation of a no contact order. The district court revoked Cole's probation and executed the underlying seven-year sentence, with three years determinate. The district court imposed concurrent, unified sentences of five years, with three years determinate, for intimidation of a witness and violation of the no contact order. The district court imposed a unified ten-year sentence, with five years determinate, for the domestic violence with traumatic injury to run concurrently. In sum, Cole received an aggregate ten-year sentence, with five years determinate. The district court subsequently reduced Cole's sentence to seven years, with three years determinate.

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 I.C.R. 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. I.C. § 19-2601. 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 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 having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in ordering execution of Cole's sentence without modification. Therefore, the order revoking probation and directing execution of Cole's previously suspended sentence is affirmed.