

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 45740

STATE OF IDAHO,)
) Filed: October 23, 2018
Plaintiff-Respondent,)
) Karel A. Lehrman, Clerk
v.)
) THIS IS AN UNPUBLISHED
JOSEPH DEAN VOLLE,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
Defendant-Appellant.)
_____)

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

Order revoking probation, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Maya P. Waldron, 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 LORELLO, Judge

PER CURIAM

Joseph Dean Volle pled guilty to felony driving under the influence of alcohol, Idaho Code §§ 18-8004, 18-8005(5). In exchange for his guilty plea, additional charges were dismissed. The district court imposed a unified sentence of seven years, with a minimum period of confinement of two years, suspended the sentence and placed Volle on supervised probation for seven years. Subsequently, Volle admitted to violating the terms of the probation. The district court continued Volle on supervised probation, extending the probationary period to ten years. A second motion for probation violation was filed and the district court revoked probation, ordered execution of the original sentence, and retained jurisdiction. Upon

completion of retained jurisdiction, Volle's sentence was suspended and he was placed on supervised probation for seven years. Following a third motion for probation violation, Volle admitted to violating the terms of his probation, and the district court revoked probation and ordered execution of the underlying sentence. Volle appeals, contending that the district court abused its discretion in revoking probation rather than allowing him to participate in veteran's court.

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.*

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 Volle's sentence without allowing him to participate in veteran's court. Therefore, the order revoking probation and directing execution of Volle's previously suspended sentence is affirmed.