

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 46472/46473

STATE OF IDAHO,)
) Filed: October 8, 2019
Plaintiff-Respondent,)
) Karel A. Lehrman, Clerk
v.)
) THIS IS AN UNPUBLISHED
LEO JOSEPH DECKER,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
Defendant-Appellant.)
_____)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Appeal from judgments of conviction and unified sentence of five years with two years determinate for possession of methamphetamine and consecutive seven-year determinate term for possession of methamphetamine with intent to deliver, dismissed.

Eric D. Fredericksen, State Appellate Public Defender; Sally J. Cooley, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Leo Joseph Decker pled guilty to possession of methamphetamine, Idaho Code § 37-2732(a)(1)(A). The district court imposed a unified sentence of five years with two years determinate, suspended the sentence, and placed Decker on probation. Decker subsequently violated the terms of that probation by committing a new crime, possession of methamphetamine with intent to deliver, I.C. § 37-2732(a). The district court imposed a seven-year determinate term, to run consecutive to the possession of methamphetamine case, and retained jurisdiction.

Following the period of retained jurisdiction, the district court placed Decker on probation in both cases. After a series of probation revocations and retained jurisdiction in both cases, Decker again violated the terms of his probation, and the district court revoked probation and retained jurisdiction a fifth time. Decker appealed from the judgments imposing his sentences and retaining jurisdiction.

On appeal, Decker raised two issues, arguing the district court erred by not reducing his sentences when revoking his probation, and the district court erred by not placing him on probation. After he filed his appeal, the district court granted Decker probation again. In his appellate brief, Decker concedes his challenge that the district court erred by not placing him on probation is moot.

A case becomes moot when the issues presented are no longer live or the defendant lacks a legally cognizable interest in the outcome. *Murphy v. Hunt*, 455 U.S. 478, 481 (1982); *Bradshaw v. State*, 120 Idaho 429, 432, 816 P.2d 986, 989 (1991). Even where a question is moot, there are three exceptions to the mootness doctrine: (1) when there is the possibility of collateral legal consequences imposed on the person raising the issue; (2) when the challenged conduct is likely to evade judicial review and thus is capable of repetition; and (3) when an otherwise moot issue raises concerns of substantial public interest. *State v. Barclay*, 149 Idaho 6, 8, 232 P.3d 327, 329 (2010). The only relief Decker has requested on appeal cannot be granted because Decker has been placed back on probation. Therefore, any judicial relief from this Court would have no effect on either party. *See id.* Accordingly, Decker's appeal from the order revoking probation is dismissed.

Regarding Decker's challenge that the district court erred by not reducing his sentence, there is no adverse ruling for this Court to review. Although Decker filed a motion under Idaho Criminal Rule 35 on March 16, 2016, the appellate record contains no order or other ruling on that motion. Decker also requested that the district court modify his sentence on August 28, 2018, during his probation violation hearing. The district court, however, did not entertain or rule on that request. Appellate courts will not review a trial court's alleged error on appeal unless the record disclosed an adverse ruling which forms the basis for the assignment of error. *State v. Fisher*, 123 Idaho 481, 485, 849 P.2d 942, 946 (1993). Because there is no adverse ruling to review and because Decker's probation challenge is moot, Decker's appeal is dismissed.

