

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 46728/46729/46730

STATE OF IDAHO, )  
 ) Filed: January 29, 2020  
 Plaintiff-Respondent, )  
 ) Karel A. Lehrman, Clerk  
 v. )  
 ) THIS IS AN UNPUBLISHED  
 ERIC CHRISTOPHER NASKER, ) OPINION AND SHALL NOT  
 ) BE CITED AS AUTHORITY  
 Defendant-Appellant. )  
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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Jason D. Scott, District Judge.

Orders revoking probation and judgment of conviction for possession of methamphetamine, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

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

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Before GRATTON, Judge; LORELLO, Judge;  
and BRAILSFORD, Judge

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PER CURIAM

In these consolidated appeals, Eric Christopher Nasker was convicted of possession of methamphetamine, Idaho Code § 37-2732(c) (Docket No. 46728); and grand theft by possession of stolen property, I.C. §§ 18-2403(4), 18-2407(1); 18-2409 (Docket No. 24729) collectively referred to as (the 2015 cases). The district court imposed concurrent unified sentences of six years with two years determinate and retained jurisdiction. Following the period of retained jurisdiction, the district court suspended Nasker's sentences and placed him on supervised probation for six years. Nasker later absconded supervision. Nasker was arrested several

months later, and after he admitted that he violated his probation, the district court reinstated his probation.

Nasker later absconded again and was at large for almost one year. During this time Nasker committed new crimes. Pursuant to a plea agreement encompassing all three cases, Nasker pled guilty to possession of methamphetamine (Docket No. 46730) referred to as (the 2018 case); and admitted to violating his probation in the 2015 cases. The district court revoked Nasker's probation and executed his underlying sentences in the 2015 cases, and the court imposed a concurrent unified sentence of six years with one and one-half years determinate in the 2018 case.

Nasker contends that the district court abused its discretion by revoking his probation in the 2015 cases, and by imposing a unified sentence of six years with one and one-half years determinate for possession of methamphetamine in the 2018 case.

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 and ordering execution of Nasker's previously suspended sentences or by imposing sentence in the 2018 case. Therefore, the order revoking probation and directing execution of Nasker's previously suspended sentences and the judgment of conviction are affirmed.