

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 46867/46868

STATE OF IDAHO,	)
	) <b>Filed: January 29, 2020</b>
<b>Plaintiff-Respondent,</b>	)
	) <b>Karel A. Lehrman, Clerk</b>
v.	)
	) <b>THIS IS AN UNPUBLISHED</b>
<b>CHANCE MWENEMATALE</b>	) <b>OPINION AND SHALL NOT</b>
<b>LEONARD,</b>	) <b>BE CITED AS AUTHORITY</b>
	)
<b>Defendant-Appellant.</b>	)
_____	)

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

Order revoking probation and requiring execution of unified ten-year sentence with two-year determinate term for felony driving under the influence of alcohol, affirmed; judgment of conviction and unified concurrent sentence of ten years with three years determinate, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Ben P. McGreevy, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Justin R. Porter, 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 Docket No. 46867, Chance Mwenematale Leonard pled guilty to felony operating a motor vehicle while under the influence of alcohol. Idaho Code §§ 18-8004, 18-8005(6). The district court sentenced Leonard to a unified term of ten years with two years determinate, but after a period of retained jurisdiction, suspended the sentence and placed Leonard on probation for ten years. Subsequently, Leonard admitted to violating the terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentence.

In Docket No. 46868, Leonard pled guilty to felony operating a motor vehicle while under the influence of alcohol. This new crime was one of the admitted probation violations in Docket No. 46867. The district court sentenced Leonard to a unified term of ten years with three years determinate to run concurrently with the sentence in Docket No. 46867.

On appeal, Leonard contends that the district court abused its discretion in Docket No. 46867 by revoking probation and executing his sentence. Leonard also asserts that the district court abused its discretion in Docket No. 46868 by imposing an excessive sentence.

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 Leonard's sentence without modification in Docket No. 46867, or by imposing sentence in Docket No. 46868. Therefore, in Docket No. 46867, the order revoking probation and directing execution of Leonard's previously suspended sentence is affirmed. Further, in Docket No. 46868, the judgment of conviction is affirmed.