

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 46877/46878/46879/46880

STATE OF IDAHO,)
) **Filed: January 27, 2020**
) **Plaintiff-Respondent,**)
) **Karel A. Lehrman, Clerk**
 v.)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
) **BRANDON ALLEN GARNER,**)
) **Defendant-Appellant.**)
)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Joel E. Tingey, District Judge.

Orders revoking probation, affirmed; judgment of conviction for felony escape, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Boise, for appellant.

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

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

PER CURIAM

In docket number 46877, Brandon Allen Garner pled guilty to possession with intent to deliver a controlled substance, Idaho Code § 37-2732(a)(1)(B), and the district court sentenced Garner to a unified term of five years with two years determinate, suspended the sentence and placed Garner on supervised probation for three years.

Garner later pled guilty to possession of a controlled substance in docket number 46878 and admitted to violating his probation in docket number 46877. The district court reinstated Garner on probation in docket number 46877 and, in docket number 46878, imposed a concurrent unified sentence of five years with two years determinate, suspended the sentence,

and placed Garner on supervised probation for five years on the condition that he successfully complete drug court.

Subsequently, Garner was arrested for domestic battery with traumatic injury, I.C. § 18-918(2)(a), and Garner was suspended from the drug court program. The district court revoked Garner's probation in docket numbers 46877 and 46878, and imposed a concurrent unified sentence of eight years with three years determinate in docket number 46879, and retained jurisdiction in all three cases. Following the period of retained jurisdiction, the district court suspended Garner's sentences and again placed him on supervised probation.

While on probation, Garner was allowed to participate in the work detail program. Several months later, Garner escaped from the work detail program, I.C. § 18-2505(1). The district court revoked Garner's probation and executed his underlying sentences in docket numbers 46877, 46878, and 46879, and imposed a consecutive sentence of three years indeterminate in docket number 46880.

Garner asserts that the district court abused its discretion by revoking his probation in docket numbers 46877, 46878, and 46879, and by imposing an excessive sentence in docket number 46880.

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. *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 in docket numbers 46877, 46878, and 46879, or by imposing sentence in docket number 46880. Therefore, the orders revoking probation and directing execution of Garner's previously suspended sentences and the judgment of conviction are affirmed.