

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47311

STATE OF IDAHO, )  
 ) **Filed: May 19, 2020**  
 ) **Plaintiff-Respondent,** )  
 ) **Karel A. Lehrman, Clerk**  
 v. )  
 ) **THIS IS AN UNPUBLISHED**  
 SCOTT DOUGLAS BURKE, ) **OPINION AND SHALL NOT**  
 ) **BE CITED AS AUTHORITY**  
 ) **Defendant-Appellant.** )  
 )  
\_\_\_\_\_ )

Appeal from the District Court of the Second Judicial District, State of Idaho, Latah County. Hon. John Judge, District Judge.

Order revoking probation and executing original sentence and order denying Idaho Criminal Rule 35 motion, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; R. Jonathan Shirts, 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 HUSKEY Chief Judge; LORELLO, Judge;  
and BRAILSFORD, Judge  
\_\_\_\_\_

PER CURIAM

Scott Douglas Burke pled guilty to burglary. I.C. §§ 18-1401, 18-1403. The district court sentenced Burke to a unified sentence of five years, with a minimum period of confinement of three years, but after a period of retained jurisdiction, suspended the sentence and placed Burke on probation. Subsequently, Burke admitted to violating the terms of the probation, and the district court again placed him on probation and he began participating in Drug Court. Burke absconded and was terminated from Drug Court. Burke again admitted to violating the terms of his probation by failing to complete Drug Court and absconding. Consequently, the district court revoked probation and ordered execution of the original sentence. Burke filed an Idaho Criminal

Rue 35 motion asking the district court to recalculate his credit for time served and to reduce his sentence. The district court denied Burke's request for a reduction in sentence, but granted the request for additional time served. Burke appeals, contending that the district court abused its discretion in revoking probation and denying his I.C.R. 35 motion for reduction of 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.* 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 Burke's sentence.

Next, a motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting an I.C.R. 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Upon review of the record, including any new information submitted with Burke's I.C.R. 35 motion, we conclude no

abuse of discretion has been shown. Hence, the district court's order denying Burke's I.C.R. 35 motion for a reduced sentence is affirmed.

Therefore, the order revoking probation and directing execution of Burke's previously suspended sentence and the order denying I.C.R. 35 motion for reduction of sentence are affirmed.