

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47392

STATE OF IDAHO,)
) Filed: April 20, 2020
Plaintiff-Respondent,)
) Karel A. Lehrman, Clerk
v.)
) THIS IS AN UNPUBLISHED
MICHAEL SHAWN SOUTH,) 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.

Order revoking probation, 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.

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

PER CURIAM

Michael Shawn South was found guilty of aggravated assault and being a persistent violator. I.C. §§ 18-901(a), 18-905(b), 18-2514. The district court sentenced South to a unified term of life with five years determinate and retained jurisdiction, following the period of retained jurisdiction, the district court relinquished jurisdiction. South filed an Idaho Criminal Rule 35 motion for a reduction of sentence, requesting that the district court reconsider relinquishment of jurisdiction and allow him to participate in a residential treatment program. The district court granted South’s Rule 35 motion, which rescinded the order relinquishing jurisdiction; suspended South’s sentence; and placed him on supervised probation for eight years on the condition that he successfully complete both inpatient and outpatient treatment, participate in domestic violence

treatment, obtain a psychiatric examination, and participate in counseling/therapy. After South completed the court-ordered treatment programs, and following several probation review hearings, the district court converted South's probation from supervised to unsupervised probation. Subsequently, South admitted to violating the terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentence. South appeals, contending that the district court abused its discretion in revoking probation.

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 in revoking probation. Therefore, the district court's order revoking probation and directing execution of South's previously suspended sentence is affirmed.