

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47409/47410/47411/47412/47413

STATE OF IDAHO,)	
)	Filed: August 13, 2020
Plaintiff-Respondent,)	
)	Melanie Gagnepain, Clerk
v.)	
)	THIS IS AN UNPUBLISHED
SHEILAH SARMIENTO,)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
Defendant-Appellant.)	
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Gene A Petty, District Judge.

Order revoking probation and executing the underlying sentences, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Kimberly A. Coster, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

This case includes five consolidated cases. In Docket No. 47409, Sheilah Sarmiento plead guilty in 2014 to possession of a controlled substance, Idaho Code § 37-2732(c)(1), and arson in the third degree, I.C. § 18-804, and the district court imposed concurrent, unified sentences of five years, with a minimum period of incarceration of two years, and placed Sarmiento on probation. In 2015, Sarmiento was charged with three new felonies. In Docket No. 47410, Sarmiento entered a guilty plea to possession of a controlled substance, I.C. § 37-2732(c)(1), and the district court imposed a unified sentence of seven years, with a minimum period of incarceration of two and one-half years, to run concurrently with the sentences in Docket No. 47409. In Docket No. 47411, Sarmiento entered a guilty plea to possession of a

controlled substance, I.C. § 37-2732(c)(1), and the district court imposed a unified sentence of seven years, with a minimum period of incarceration of two and one-half years, with the sentence to run concurrently with the sentences in Docket Nos. 47409 and 47410. In Docket No. 47412, Sarmiento entered a guilty plea to aggravated assault, I.C. §§ 18-901(1), 18-905(b), and the district court imposed a unified sentence of three years, with a minimum period of incarceration of one year, to run concurrently with all other sentences. Based on Sarmiento's guilty plea in Docket No. 47410, the district court revoked probation in Docket No. 47409 and executed the underlying sentence. The district court retained jurisdiction in all cases.

After successfully completing the period of retained jurisdiction, the district court suspended the sentences and placed Sarmiento on probation. In Docket No. 47413, Sarmiento entered a guilty plea to possession of a controlled substance, and the district court imposed a unified sentence of seven years, with a minimum period of incarceration of four years, to run concurrently with all other sentences. The district court suspended the sentence and placed Sarmiento on probation and ordered her to complete the Canyon County Mental Health Program. As a result of pleading guilty to a new crime in Docket No. 47413, Sarmiento admitted to violating the terms of her probation in each of her prior cases. The district court revoked, but reinstated her probation, and amended the terms of probation in each case to include a requirement that she complete the Canyon County Mental Health Program.

Sarmiento did not complete Canyon County Mental Health Program and thus, admitted to violating the terms of her probation in each case. The district court revoked probation, ordered the underlying sentences executed, and retained jurisdiction in all cases. After Sarmiento successfully completed the period of retained jurisdiction, the district court placed Sarmiento on probation.

The State subsequently alleged Sarmiento violated the terms of her probation by disturbing the peace, leaving the judicial district without permission, using or possessing a controlled substance, and failing to take her prescribed mental health medications. Following a hearing, the district court found Sarmiento violated her probation by committing the acts described in the first three allegations. Consequently, the district court revoked probation in each case and ordered execution of the original sentences. Pursuant to Sarmiento's Idaho Criminal Rule 35 motion, the district court modified Sarmiento's sentence in Docket No. 47413 to a unified sentence of seven years, with a minimum period of incarceration of two and one-half

years. Sarmiento 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 has 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 records in these cases, we cannot say that the district court abused its discretion either in revoking probation or in ordering execution of Sarmiento's sentences. Therefore, the orders revoking probation and directing execution of Sarmiento's previously suspended sentences are affirmed.