

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47526/47529

STATE OF IDAHO,)	
)	Filed: June 17, 2020
Plaintiff-Respondent,)	
)	Melanie Gagnepain, Clerk
v.)	
)	THIS IS AN UNPUBLISHED
MEGAN DIANE KELLER,)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
Defendant-Appellant.)	
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Lynn G. Norton, District Judge.

Order revoking probation and directing execution of previously suspended sentence in Docket No. 47526, affirmed; and judgment of conviction and sentence in Docket No. 47529, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Ben P. McGreevy, Deputy 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 No. 47526, Megan Diane Keller pleaded guilty to felony possession of a controlled substance. I.C. § 37-2732(c). The district court imposed a unified sentence of seven years, with a minimum period of confinement of three years, suspended the sentence, and placed Keller on probation. Subsequently, Keller admitted to violating the terms of her probation. The district court revoked probation, ordered the underlying sentence executed, and retained jurisdiction. Keller successfully completed the retained jurisdiction program, and the district court placed Keller on probation. Keller was ultimately granted unsupervised probation.

Approximately three years later, Keller received misdemeanor criminal charges. Keller admitted to violating the terms of her probation, and the district court ordered her to obtain a GAIN evaluation, comply with the terms of the evaluation, serve 90 days of jail, and complete the jail substance abuse program. Keller completed the program and was released on probation.

While on probation, Keller admitted to a second charge of felony possession of a controlled substance, I.C. § 37-2732(c), in Docket No. 47529. The district court imposed a unified sentence of five years, with a minimum period of confinement of two years, to run concurrently with Docket No. 47526. In addition, in Docket No. 47526, Keller admitted to violating the terms of her probation, and the district court revoked probation and ordered the original sentence executed. Keller appeals, contending the district court abused its discretion in revoking probation and ordering execution of the underlying sentence in Docket No. 47526 and that the sentence is excessive in Docket No. 47529.

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 Idaho Criminal Rule 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.*

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.

Further, the initial 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).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that in Docket No. 47526 the district court abused its discretion either in revoking probation or in ordering execution of Keller's sentence without modification or that in Docket No. 47529 the district court abused its discretion by imposing an excessive sentence. Therefore, the order revoking probation and directing execution of Keller's previously suspended sentence in Docket No. 47526 and the judgment of conviction and sentence in Docket No. 47529 are affirmed.