

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47537/47538

STATE OF IDAHO,)
)
) **Filed: August 18, 2020**
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) **Melanie Gagnepain, Clerk**
)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Darren B. Simpson, District Judge.

Order revoking probation, 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 GRATTON, Judge; LORELLO, Judge;
and BRAILSFORD, Judge

PER CURIAM

In Docket No. 47537, David Ray Killam pled guilty to felony possession of methamphetamine. Idaho Code § 37-2732(c)(1). In exchange for his guilty plea, an additional charge and persistent violator enhancement were dismissed. The district court imposed a unified sentence of seven years with a three-year determinate term, suspended the sentence, and placed Killam on probation. In Docket No. 47538, Killam pleaded guilty to felony principal to grand theft by receiving/possessing stolen property. I.C. §§ 18-2403(4)(c), 18-2407(1)(b)(1), 18-204. In exchange for his guilty plea, additional charges were dismissed. The district court imposed a concurrent unified sentence of ten years with a four-year determinate term, suspended the

sentence, and placed Killam on probation. Subsequently, Killam admitted to violating the terms of probation. The district court revoked probation in both cases, ordered execution of the original sentences, and retained jurisdiction. Upon completion of the retained jurisdiction program, Killam was placed back on probation. Following several reports of probation violations, the district court again revoked probation in both cases and ordered execution of the underlying sentences. Killam 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(4). 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 Killam's sentences. Therefore, the order revoking probation and directing execution of Killam's previously suspended sentences is affirmed.