

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47646/47647/47648/47649/47650

STATE OF IDAHO,)
) Filed: October 15, 2020
 Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
 v.)
) THIS IS AN UNPUBLISHED
 JACOB RUSSELL MOORE,) 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 in each of five cases, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jacob L. Westerfield, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

In Docket No. 47646 Jacob Russell Moore pled guilty to felony eluding a police officer, possession of a stolen vehicle, possession of methamphetamine, and possession of cocaine. Idaho Code §§ 49-1404(2), 49-228, 37-2732(c)(1). Moore was sentenced to five years with one year determinate on the first two counts, and seven years with one year determinate on the last two counts, was placed on retained jurisdiction and later placed on probation.

In Docket No. 47647 Moore pled guilty to possession of methamphetamine and possession of a controlled substance in a correctional facility. I.C. §§ 37-2732(c), 18-2510(3)(a), (c). Moore was sentenced to seven years with five years determinate on the first count and five years determinate on the second count, and he was placed on retained jurisdiction. At the

sentencing hearing Moore admitted to violating his probation in Docket No. 47646, and the district court placed him on a second period of retained jurisdiction to run concurrent with the retained jurisdiction in Docket No. 47647. After completing his period of retained jurisdiction in both cases, Moore was placed on probation in both cases.

Several months later, Moore was charged with violating the conditions of probation and he admitted to those violations. Prior to a disposition hearing on those admissions, Moore pled guilty to making a false bomb threat in Docket No. 47648, I.C. § 18-3313, and possession of a controlled substance with intent to deliver in Docket No. 47649, I.C. § 37-2732(a)(1). At a joint sentencing/disposition hearing on Moore's four cases, the district court sentenced Moore to five years determinate for making a false bomb threat and twenty-five years with five years determinate for possession of a controlled substance with intent to deliver and placed him on retained jurisdiction in both cases. The court also revoked Moore's probation and placed Moore on a concurrent retained jurisdiction in the two probation violation cases. Following the period of retained jurisdiction, Moore was placed on probation in all four cases.

In the following months, Moore admitted to violating the terms of his probation on two additional occasions and, after an evidentiary hearing, the district court found another allegation to be true, revoked Moore's probation, and ordered the sentences in each of the four cases be executed. Moore filed Idaho Criminal Rule 35 motions, which the district court granted, again placing Moore in the retained jurisdiction program. Thereafter, the district court placed Moore on probation in each of the four cases. Subsequently, Moore again violated probation, was again placed in the retained jurisdiction program and later on probation.

In Docket No. 47650, Moore was charged with possession of methamphetamine and drug paraphernalia, with a persistent violator allegation, and, in the other four cases, the State alleged Moore violated his probation based on those new offenses. Pursuant to a plea agreement, Moore pled guilty to possession of methamphetamine, I.C. § 37-2732(c)(1), and the remaining charge and sentence enhancement were dismissed; he also admitted violating his probation in the four prior cases. The district court sentenced Moore to a term of seven years with three years determinate, and yet again placed him in the retained jurisdiction program. The district court also concurrently revoked Moore's probation and placed Moore in the retained jurisdiction program for his probation violation in each of the four prior cases. After completion of the

retained jurisdiction, the district court relinquished jurisdiction in each of the five cases because Moore did not have a structured treatment program in place.

Moore filed an I.C.R. 35 motion in all five cases, and at the evidentiary hearing on the motion the court deemed the hearing a continuation of the retained jurisdiction hearing. At the hearing, the court was informed that Moore had been accepted into an in-patient treatment program and the court suspended his sentences and placed him on supervised probation for four years in all five cases. A probation violation was later filed and at the evidentiary hearing the district court found Moore had again violated the terms of his probation and revoked Moore's probation and ordered the underlying sentences executed.

Moore filed another I.C.R. 35 motion for leniency in all five cases. The district court denied Moore's Rule 35 motions in regard to the four oldest cases, deeming those motions successive, and the court denied Moore's Rule 35 motion on the merits in Docket No. 47650.

Moore appeals in each of the five cases asserting that the district court abused its discretion by revoking his 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 record in these cases, we cannot say that the district court abused its discretion either in revoking probation or in ordering Moore's sentences executed. Therefore, the order revoking probation and ordering Moore's previously suspended sentences executed is affirmed.