

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47775/47776

STATE OF IDAHO,)	
)	Filed: November 3, 2020
Plaintiff-Respondent,)	
)	Melanie Gagnepain, Clerk
v.)	
)	THIS IS AN UNPUBLISHED
NICHOLAS DYLAN TAMEZ,)	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. Deborah A. Bail, District Judge.

Orders revoking probation and directing execution of Tamez’s previously suspended sentences, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jacob L. Westerfield, 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; LORELLO, Judge;
and BRAILSFORD, Judge

PER CURIAM

In Docket No. 47775, Nicholas Dylan Tamez pled guilty to felony aggravated assault, Idaho Code §§ 18-901, -905(b). The district court imposed a unified five-year sentence, with two years determinate, and placed Tamez on probation. While on probation, in Docket No. 47776, Tamez received new criminal charges, and the State filed a probation violation in Docket No. 47775. In Docket No. 47776, Tamez pled guilty to felony possession of a controlled substance, I.C. § 37-2732(c), and misdemeanor providing false information to law enforcement, I.C. § 18-5413(2). The district court sentenced Tamez to a unified seven-year sentence, with two years determinate, for the possession of a controlled substance charge and ordered the sentence

to run concurrent with Tamez's sentence in Docket No. 47775. The court sentenced Tamez to sixty days of jail for providing false information. In Docket No. 47775, Tamez admitted to violating the terms of his probation, and the district court revoked probation and ordered execution of his previously suspended sentence. The district court retained jurisdiction in both cases.

After a period of retained jurisdiction, the district court suspended the sentences and placed Tamez on probation. Subsequently, Tamez admitted to violating the terms of the probation in both cases, and the district court consequently revoked probation and ordered execution of the previously imposed sentences. Tamez 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 records in these cases, we cannot say that the district court abused its discretion either in revoking probation or in ordering

execution of Tamez's sentences. Therefore, the orders revoking probation and directing execution of Tamez's previously suspended sentences are affirmed.