

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47986

STATE OF IDAHO, )  
 ) Filed: January 21, 2021  
 Plaintiff-Respondent, )  
 ) Melanie Gagnepain, Clerk  
 v. )  
 ) THIS IS AN UNPUBLISHED  
 JAMES ROBERT KUEHNEL, JR., ) 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. Samuel Hoagland, District Judge.

Order revoking probation, 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.

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Before HUSKEY, Chief Judge; LORELLO, Judge;  
and BRAILSFORD, Judge  
\_\_\_\_\_

PER CURIAM

James Robert Kuehnel, Jr., pled guilty to felony intimidating a witness, Idaho Code § 18-2604; two counts of misdemeanor violation of a no-contact order, I.C. § 18-920; and one count of felony violation of a no-contact order, I.C. § 18-920(3). In exchange for his guilty plea, additional charges were dismissed. For each of the misdemeanors, Kuehnel was sentenced to 120 days with credit for 120 days served. The district court imposed a unified five-year sentence with two years determinate for felony intimidating a witness and three years indeterminate for felony violation of a no-contact order. After a period of retained jurisdiction, the district court suspended Kuehnel's sentences and placed him on probation. Subsequently, Kuehnel admitted

to violating the terms of the probation, and the district court consequently revoked probation and ordered execution of the sentences, reducing the sentence for intimidating a witness to five years with one year determinate. The sentences were ordered to run consecutive to each other and credit was granted for 486 days served on both counts. Kuehnel filed an Idaho Criminal Rule 35 motion for reduction of sentence, which was denied. Kuehnel 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 Kuehnel's sentences. Therefore, the order revoking probation and directing execution of Kuehnel's previously suspended sentences is affirmed.