

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 48057 & 48058

STATE OF IDAHO,)	
)	Filed: January 21, 2021
Plaintiff-Respondent,)	
)	Melanie Gagnepain, Clerk
v.)	
)	THIS IS AN UNPUBLISHED
KYLIE MICHELLE LAKE,)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
Defendant-Appellant.)	
_____)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Darren B. Simpson, District Judge.

Order denying Idaho Criminal Rule 35 motions and orders revoking probation and executing the original sentences, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Emily M. Joyce, 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 Supreme Court Docket No. 48057, Kylie Michelle Lake was charged with burglary in violation of Idaho Code § 18-1401. Lake pleaded guilty and was sentenced to a unified term of six years, with two years determinate. The district court suspended the sentence and placed Lake on probation. During her period of probation, Lake pleaded guilty to possession of a controlled substance, I.C. § 37-2732(c)(1). This gave rise to Docket No. 48058. It also resulted in a probation violation in Docket No. 48057. Lake admitted she violated the terms of probation in Docket No. 48057. In Docket No. 48058, Lake was sentenced to a unified term of seven years, with three years determinate. The district court ordered this sentence to run consecutively to the sentence in

Docket No. 48057, but again suspended the sentences and placed Lake on probation. Thereafter, Lake admitted violating the terms of her probation in both cases by committing a new crime. The district court revoked probation in each case, and executed the underlying sentences. Lake filed an Idaho Criminal Rule 35 (Rule 35) motion in each case, which the district court denied. Lake appeals.

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 record in this case, we cannot say that the district court abused its discretion in revoking probation.

Next, a motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting an I.C.R. 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In conducting our review of the grant or denial of an I.C.R. 35 motion, we consider the entire record and apply the same criteria used for

determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987). Applying these standards, and having reviewed the records in these cases, we cannot say that the district court abused its discretion when it denied Lake's Rule 35 motions.

Therefore, the orders revoking probation and denying the Rule 35 motions are affirmed.