

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 48061, 48062 & 48063

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) **Filed: June 1, 2021**
)
 v.) **Melanie Gagnepain, Clerk**
)
 PATRICK RAY NARCHO,) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
 Defendant-Appellant.)
)
)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Eric J. Wildman, District Judge.

Orders revoking probation and ordering execution of the originally suspended sentences, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Andrea W. Reynolds, Deputy Appellate Public Defender, Boise, for appellant.

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

Before HUSKEY, Chief Judge; GRATTON, Judge;
and LORELLO, Judge

PER CURIAM

Patrick Ray Narcho has three cases in this consolidated appeal. In Docket Nos. 48061 and 48062, Narcho pleaded guilty to possession of a controlled substance, Idaho Code § 37-2732(c)(1). For each charge, the district court sentenced Narcho to a unified term of five years, with three years determinate, to run concurrently with each other. After a period of retained jurisdiction, the district court suspended the sentences and placed Narcho on probation.

During the rider, Narcho was charged with additional crimes. Narcho subsequently pleaded guilty to rape, I.C. § 16-6101, and entered an *Alford*¹ plea to sexual battery of a child

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

committed by lewd or lascivious acts on a minor child sixteen or seventeen years of age, I.C. § 18-1508A(1)(a), giving rise to Docket No. 48063. For each charge, the district court sentenced Narcho to a unified term of ten years, with five years determinate, to run concurrently with each other, but to run consecutively to the sentences in Docket Nos. 48061 and 48062. The district court again retained jurisdiction. Following Narcho's second period of retained jurisdiction, the district court suspended the sentences and placed Narcho on probation.

Thereafter, Narcho admitted to violating the terms of his probation in each case, and the district court revoked probation in each case and ordered Narcho to serve the previously suspended sentences. Narcho appeals, contending that the district court abused its discretion in revoking probation and ordering execution of the previously suspended sentences.

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 in revoking probation and ordering execution

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