

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 48387, 48388, 48389, 48390

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| STATE OF IDAHO, |) |
| |) Filed: September 17, 2021 |
| Plaintiff-Respondent, |) |
| |) Melanie Gagnepain, Clerk |
| v. |) |
| |) THIS IS AN UNPUBLISHED |
| DEREK DUANE BEESE, |) 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. Jason D. Scott, District Judge.

Orders revoking probation and executing concurrent, unified sentences for grand theft, possession of methamphetamine, and grand theft by receiving stolen property, affirmed; judgment of conviction and concurrent, unified sentence of five years with two years determinate for felony eluding a peace officer, 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 HUSKEY, Chief Judge; GRATTON, Judge;
and BRAILSFORD, Judge

PER CURIAM

These cases are consolidated for appeal. In two separate cases in 2016 (the 2016 cases), Derek Duane Beese pled guilty to grand theft, Idaho Code §§ 18-2403(1), 18-2407(1)(b), 18-2409, and to possession of methamphetamine, I.C. § 37-2732(c). The district court imposed a unified sentence of eight years with two years determinate in the grand theft case, with credit for time served, and retained jurisdiction. For possession of methamphetamine, Beese received a concurrent, unified sentence of six years with two years determinate. Upon his completion of

retained jurisdiction, the district court suspended Beese's sentences and placed him on probation in each case. In 2017, prior to being placed on probation in the 2016 cases, Beese was charged with and pled guilty to grand theft by receiving stolen property, I.C. §§ 18-2403(4), 18-2407(b)(6) (the 2017 case). The district court imposed a unified sentence of five years with two years determinate, suspended the sentence, and placed Beese on probation. In 2020, Beese admitted to violating the terms of his probation and pled guilty to felony eluding a peace officer, I.C. § 49-1404(2)(a) and/or (c) (the 2020 case). The district court consequently revoked probation in the 2016 and the 2017 cases and ordered execution of the original sentences in each case. In the 2020 case, the district court imposed a unified sentence of five years with two years determinate, to run concurrently with the sentences in Beese's other three cases. Beese filed Idaho Criminal Rule 35 motions for reduction of his sentences in all four cases, which were denied. Beese appeals, contending that the district court abused its discretion in revoking probation and ordering execution of his sentences in the 2016 and the 2017 cases. He also argues that his sentence in the 2020 case is excessive.

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.*

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Our role is limited to determining whether reasonable minds could reach the same conclusion as the district court. *State v. Biggs*, 168 Idaho 112, 116, 480 P.3d 150, 154 (Ct. App. 2020).

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 Beese's sentences in the 2016 case and the 2017 case without modification. Therefore, the orders revoking probation and directing execution of Beese's previously suspended sentences in the 2016 and the 2017 cases are affirmed, and Beese's judgment of conviction and sentence in the 2020 case is affirmed.