

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 48447 & 48448

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) **Filed: July 20, 2021**
)
 v.) **Melanie Gagnepain, Clerk**
)
 ELIE MALUBEKI,) **THIS IS AN UNPUBLISHED**
) **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. Nancy Baskin, District Judge.

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

Eric D. Fredericksen, State Appellate Public Defender; Kiley A. Heffner, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer Jensen, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

In these two consolidated appeals, Elie Malubeki asserts the district court abused its discretion by revoking probation and ordering execution of the previously suspended sentences. In Docket No. 48447, Malubeki pleaded guilty to one count of burglary. I.C. § 18-1401. In Docket No. 48448, Malubeki pleaded guilty to another count of burglary. I.C. § 18-1401. In each case, the district court imposed eight-year sentences, with two years determinate, with the sentences running concurrently with each other, and retained jurisdiction. After a period of retained jurisdiction, the district court suspended the sentences and placed Malubeki on probation. Subsequently, Malubeki admitted to violating the terms of the probation, and the district court

consequently revoked probation and ordered execution of the previously suspended sentences. Malubeki appeals, contending that the district court abused its discretion in revoking probation and ordering execution of the previously suspended sentences and by not commuting the remainder of Malubeki's sentences to time served.

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 and ordering execution of Malubeki's previously suspended sentences or by failing to commute Malubeki's sentences to time served. Therefore, the orders revoking probation and directing execution of Malubeki's previously suspended sentences are affirmed.