

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 48571/48584

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, ) **Filed: September 13, 2021**  
 )  
 v. ) **Melanie Gagnepain, Clerk**  
 )  
 JOSHUA DON MARTINEZ, ) **THIS IS AN UNPUBLISHED**  
 ) **OPINION AND SHALL NOT**  
 ) **BE CITED AS AUTHORITY**  
 Defendant-Appellant. )  
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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Cassia County. Hon. Michael P. Tribe, District Judge.

Order revoking probation and executing previously suspended sentence, and judgment of conviction and sentence, 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.

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

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PER CURIAM

Joshua Don Martinez has two cases in this consolidated appeal. In Docket No. 48571, Martinez pled guilty to possession of a controlled substance with intent to deliver. I.C. § 37-2732(a)(1)(A). The district court sentenced Martinez to a unified ten-year sentence, with four years determinate, suspended the sentence, and placed Martinez on probation. Shortly thereafter, Martinez admitted to violating the terms of his probation. The district court revoked probation, ordered the previously imposed sentence executed, and retained jurisdiction. After Martinez completed the period of retained jurisdiction, the district court again suspended Martinez's sentence and placed him on probation.

Approximately three months later, the State filed new charges against Martinez for felony possession of a controlled substance, I.C. § 37-2732(C)(1), and misdemeanor possession of drug paraphernalia, I.C. § 37-2734A(1), resulting in Docket No. 48584. The State also charged Martinez with a probation violation in Docket No. 48571. Martinez pled guilty to the felony possession charge in Docket No. 48584, and the district court imposed a unified five-year sentence, with one year determinate. Martinez admitted to violating his probation in Docket No. 48571, and the district court revoked probation and ordered execution of the previously suspended sentence. The sentences were ordered to run concurrently.

Martinez appeals, contending that the district court abused its discretion in revoking probation and ordering execution of the previously suspended sentence in Docket No. 48571 and abused its discretion by imposing an excessive sentence in Docket No. 48584.

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.*

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).

When we review a sentence that is ordered into execution following a period of probation, we will examine the entire record encompassing events before and after the original judgment. *State v. Hanington*, 148 Idaho 26, 29, 218 P.3d 5, 8 (Ct. App. 2009). We base our review upon the facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of probation. *Id.* Thus, this Court will consider the elements of the record before the trial court that are properly made part of the record on appeal and are relevant to the defendant's contention that the trial court should have reduced the sentence sua sponte upon revocation of probation. *Morgan*, 153 Idaho at 621, 288 P.3d at 838.

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 or ordering execution of Martinez's sentence in Docket No. 48571 or imposing sentence in Docket No. 48584. Therefore, the order revoking probation and directing execution of Martinez's previously suspended sentence and the judgment of conviction and sentence are affirmed.