

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 48818/48819

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, ) **Filed: February 3, 2022**  
 )  
 v. ) **Melanie Gagnepain, Clerk**  
 )  
 DANIEL GERBER, JR., ) **THIS IS AN UNPUBLISHED**  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 Sixth Judicial District, State of Idaho, Bannock County. Hon. Robert C. Naftz, District Judge.

Order revoking probation and ordering execution of a reduced sentence and judgment of conviction and sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Kiley A. Heffner, 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 GRATTON, Judge; HUSKEY, Judge;  
and BRAILSFORD, Judge

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PER CURIAM

This appeal involves two consolidated cases. In Docket No. 48818, Daniel Gerber, Jr. pled guilty to injury to child, Idaho Code § 18-1501(1), and the district court imposed a unified sentence of ten years, with a minimum period of incarceration of two years, suspended the sentence, and placed Gerber on probation. Approximately a year later, Gerber admitted to violating his probation, and the district court consequently revoked probation, ordered execution of the original sentence, and retained jurisdiction. After a period of retained jurisdiction, the district court suspended the sentence and placed Gerber on probation. Approximately a year later, Gerber admitted to violating his probation, which included admitting to a new charge in Docket

No. 48819. Based on the admissions, in Docket No. 48818, the district court revoked probation, ordered execution of a reduced unified sentence of eight years, with a minimum period of incarceration of two years. In Docket No 48819, Gerber pled guilty to unlawful possession of a weapon by a convicted felon, I.C. § 18-3316(1), and the district court imposed a unified sentence of three years, with a minimum period of incarceration of two years, to run concurrently with the sentence in Docket No. 48818. Gerber appeals, contending that the district court abused its discretion in revoking probation and imposing an excessive sentence.

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 records in these cases, we cannot say that the district court abused its discretion either in revoking probation in Docket No. 48818 or by imposing sentence in Docket No. 48819. Therefore, the order revoking probation and directing execution of a reduced sentence and the judgment of conviction and sentence are affirmed.