

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 48961/48962

STATE OF IDAHO,)
)
) **Filed: March 22, 2022**
)
) **Melanie Gagnepain, Clerk**
)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
)
)
)
)
)
)
)
)

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Javier Gabiola, District Judge.

Orders revoking probation and directing execution of 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; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before GRATTON, Judge; HUSKEY, Judge;
and BRAILSFORD, Judge

PER CURIAM

Brian Michael Becerril has two cases in this consolidated appeal. Pursuant to a plea agreement encompassing both cases, Becerril pled guilty to forgery by passing a fictitious bill, Idaho Code § 18-3606, and forgery, I.C. § 18-3601. In exchange for his guilty pleas, additional charges were dismissed. For each charge, the district court imposed a unified ten-year sentence, with five years determinate, suspended the sentence, and placed Becerril on probation for six years. After several subsequent probation violations and a period of retained jurisdiction, Becerril was again placed on probation. Becerril subsequently admitted to violating the terms of his probation, and the district court continued Becerril on probation with an additional term that he complete the

Family Treatment Court program. Thereafter, Becerril again admitted to violating the terms of his probation. At the probation violation disposition hearing, Becerril requested the district court continue him on probation, retain jurisdiction, or reduce the determinate portion of his sentences. Instead, the district court revoked Becerril's probation and ordered execution of the previously suspended sentences. Becerril appeals, contending that the district court abused its discretion in revoking probation without retaining jurisdiction or, alternatively, without reducing the determinate portion of his sentence.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation has 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.*

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. *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 in ordering execution of Becerril's sentences without modification. Therefore, the orders revoking probation and directing execution of Becerril's previously suspended sentences are affirmed.