

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 48988/48989/48990

|                              |                                   |
|------------------------------|-----------------------------------|
| STATE OF IDAHO,              | )                                 |
|                              | ) <b>Filed: March 15, 2022</b>    |
| <b>Plaintiff-Respondent,</b> | )                                 |
|                              | ) <b>Melanie Gagnepain, Clerk</b> |
| v.                           | )                                 |
|                              | ) <b>THIS IS AN UNPUBLISHED</b>   |
| <b>JOSEPH DEAN TURNER,</b>   | ) <b>OPINION AND SHALL NOT</b>    |
|                              | ) <b>BE CITED AS AUTHORITY</b>    |
| <b>Defendant-Appellant.</b>  | )                                 |
| _____                        | )                                 |

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

Orders revoking probation, 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 LORELLO, Chief Judge; GRATTON, Judge;  
and BRAILSFORD, Judge

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PER CURIAM

In 2006, Joseph Dean Turner pled guilty to sexual abuse of a child under sixteen, Idaho Code § 18-1506 (Docket No. 48988). The district court imposed a unified term ten years with five years determinate and the district court retained jurisdiction. Following the period of retained jurisdiction, the district court suspended the sentence and placed Turner on probation for a period of fifteen years.

In 2013, Turner admitted to violating the terms of the probation, and pled guilty to unlawful possession of a firearm, I.C. § 18-3316 (Docket No. 48989). The district court imposed a unified term of five years with three years determinate, suspended the sentence, and placed him on probation for five years. The district court continued Turner’s probation in Docket No. 48988

for five years and ordered the sentence in Docket No. 48988 to run concurrently with the sentence in Docket No. 48989.

In 2016, Turner pled guilty to felony driving under the influence, I.C. 18-8004 (Docket No. 48990). The district court imposed a unified term of ten years with five years determinate, suspended the sentence, and retained jurisdiction. Turner admitted to violating his probation in Docket Nos. 48988 and 48989, and the district court revoked probation, executed the underlying sentences, and again retained jurisdiction. The district court also ordered the sentences in all three cases to run concurrently. In 2018, after completing the retained jurisdiction period in all three cases, Turner was placed on probation for six years.

In 2021, Turner admitted to violating several terms of his probation. The district court revoked his probation and executed his underlying sentences. Turner filed Idaho Criminal Rule 35 motions in all three cases, which the district court denied.<sup>1</sup> Turner appeals, claiming that the district court abused its discretion in revoking his probation.

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

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<sup>1</sup> Turner does not challenge the denial of the Idaho Criminal Rule 35 motions on appeal.

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 record in this case, we cannot say that the district court abused its discretion either in revoking probation or in ordering execution of Turner's sentences. Therefore, the orders revoking probation and directing execution of Turner's previously suspended sentences are affirmed.