

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 49011/49012/49013

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) **Filed: July 14, 2022**
)
 v.) **Melanie Gagnepain, Clerk**
) **THIS IS AN UNPUBLISHED**
 EDWARD AVENS ALLEN,) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
 Defendant-Appellant.)
)
)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Scott L. Wayman, District Judge.

Order revoking probation, affirmed; judgment of conviction and unified sentence of fifteen years, with a minimum period of confinement of five years, for felony injury to a child, affirmed; judgment of conviction and unified sentence of five years with a minimum period of confinement of two years, for possession of a firearm, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jacob L. Westerfield, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

In Docket No. 49011, Edward Avens Allen pled guilty to burglary, Idaho Code § 18-1401. While Allen was on probation in Docket No. 49011, he was charged in two separate cases in 2020. Allen admitted to some of the probation violations and the district court revoked Allen's probation in Docket No. 49011 and executed the underlying sentence. In Docket

No. 49012, Allen entered an *Alford*¹ plea to felony injury to a child and admitted to the persistent violator enhancement, I.C. §§ 18-1501(1), 19-2514. The district court sentenced Allen to a unified term of fifteen years with five years determinate. In Docket No. 49013, Allen pled guilty to two counts of unlawful possession of a firearm and a persistent violator enhancement, I.C. §§ 18-3316, 19-2514. The district court sentenced Allen to a unified term of five years with two years determinate.

Allen appeals, contending that the district court abused its discretion by failing to retain jurisdiction upon revoking probation in Docket No. 49011, and by imposing excessive sentences in Docket Nos. 49012 and 49013.

After a probation violation has been established, the trial court may 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).

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

¹ *See North Carolina v. Alford*, 400 U.S. 25 (1970).

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 record in this case, we cannot say that the district court abused its discretion by failing to retain jurisdiction upon revoking probation (Docket No. 49011) or by imposing sentences (Docket Nos. 49012 and 49013). Therefore, the order revoking probation and directing execution of Allen's previously suspended sentence and Allen's judgments of conviction and sentences are affirmed.