

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 49346/49347

STATE OF IDAHO,)
) **Filed: August 10, 2022**
 Plaintiff-Respondent,)
) **Melanie Gagnepain, Clerk**
 v.)
) **THIS IS AN UNPUBLISHED**
 EDWARD DWAYNE PRESCOTT,) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
 Defendant-Appellant.)
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Derrick J. O’Neill, District Judge.

Order revoking probation and directing execution of unified seven-year sentence with two-year determinate term for possession of methamphetamine, affirmed; judgment of conviction and concurrent unified sentence of six years with a minimum period of confinement of one year for possession of methamphetamine, affirmed

Eric D. Fredericksen, State Appellate Public Defender; Andrea W. Reynolds, 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. 49346 Edward Dwayne Prescott pled guilty to possession of methamphetamine, Idaho Code § 37-2732(c). In exchange for his guilty plea, additional charges were dismissed. The district court imposed a unified sentence of seven years with two years determinate and retained jurisdiction. After the period of retained jurisdiction, the district court suspended the sentence and placed Prescott on probation. Prescott subsequently absconded from

probation and was later found in possession of methamphetamine as well other controlled substances.

In Docket No. 49347 Prescott pled guilty to possession of methamphetamine, I.C. § 372732(c). In exchange for his guilty plea, additional charged were dismissed. Prescott admitted to violating the terms of the probation, and the district court imposed a concurrent sentence of six years with one year determinate in Docket No. 49347 and revoked probation in Docket No. 49346. Prescott appeals, contending that the district court abused its discretion by not placing him on probation in both cases and that the sentence in Docket No. 49347 is excessive.

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).

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 record in these cases, we cannot say that the district court abused its discretion by not ordering probation in both cases or by imposing an excessive sentence in Docket No. 49347. Therefore, the order revoking probation and directing execution of Prescott's previously suspended sentence in Docket No. 49346 is affirmed, and Prescott's judgment of conviction and sentence in Docket No. 49347 is affirmed.