

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 49479/49480/49481

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) **Filed: December 12, 2022**
)
 v.) **Melanie Gagnepain, Clerk**
)
 KENNETH EZEKIEL CHARLES) **THIS IS AN UNPUBLISHED**
 MCCULLOCH,) **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. John T. Mitchell, 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 LORELLO, Chief Judge; HUSKEY, Judge;
and BRAILSFORD, Judge

PER CURIAM

Kenneth Ezekiel Charles McCulloch has three consolidated cases in this appeal. In Docket No. 49479, McCulloch pled guilty to possession of a controlled substance with intent to deliver, Idaho Code § 37-2732(a)(1), and the district court imposed a ten-year sentence, with four years determinate, and retained jurisdiction. After McCulloch completed the period of retained jurisdiction, the district court suspended the sentence and placed McCulloch on probation. Subsequently, in Docket No. 49480, McCulloch pled guilty to possession of a controlled substance, I.C. § 37-2732(c)(1), and admitted to violating the terms of probation in Docket

No. 49479. In Docket No. 49480, the district court imposed a seven-year sentence, with one year determinate, to run consecutively to his sentence in Docket No. 49479. In Docket No. 49479, the district court revoked probation and ordered execution of the previously suspended sentence. The district court retained jurisdiction in both cases and after a period of retained jurisdiction, the court placed McCulloch on probation. McCulloch admitted violating his probation again, and the district court continued McCulloch on probation for an additional year.

While on probation in the above two cases, in Docket No. 49481, McCulloch was charged with new offenses and, pursuant to a plea agreement, he pleaded guilty to felony possession of a controlled substance, I.C. § 37-3732(c)(1), and misdemeanor resisting or obstructing officers, I.C. § 18-705. The district court imposed a six-year sentence, with three years determinate, for the felony and ninety days of jail for the misdemeanor. The sentences were ordered to run concurrently with his other two sentences. McCulloch also admitted to violating the terms of his probation in Docket Nos. 49479 and 49480, and the district court revoked probation and ordered execution of the previously suspended sentences. For a third time, the district court retained jurisdiction in all three cases, and after McCulloch completed the period of retained jurisdiction, the district court again placed McCulloch on probation. Subsequently, McCulloch again admitted to violating the terms of his probation in Docket Nos. 49479 and 49780, and the district court continued McCulloch on probation.

After yet another admission to violating the terms of his probation in all three cases, the district court revoked probation, ordered execution of the previously suspended sentences, and after a fourth period of retained jurisdiction, the district court placed McCulloch on probation. Once again, McCulloch admitted to violating the terms of probation in each case, and the district court revoked probation and executed the previously suspended sentences.

On appeal, McCulloch does not challenge the district court's decision to revoke probation, but argues only that the district court abused its discretion when did not retain jurisdiction after revoking probation.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the 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). That discretion includes

the trial court's decision regarding whether a defendant should be placed on probation and whether to retain jurisdiction. I.C. § 19-2601(3), (4); *State v. Reber*, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The record in this case shows that the district court properly considered the information before it and determined that retaining jurisdiction was not appropriate.

Therefore, the orders revoking probation and directing execution of McCulloch's previously suspended sentences without retaining jurisdiction are affirmed.