

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 49514

STATE OF IDAHO,)
) Filed: October 12, 2022
 Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
 v.)
) THIS IS AN UNPUBLISHED
 NICOLAS ERIC SILVA JONES,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
 Defendant-Appellant.)
)
 _____)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Blaine County. Hon. Ned. C. Williamson, District Judge.

Order revoking probation, affirmed.

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

Hon. Lawrence G. Wasden, Attorney General; Kacey L. Jones, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Nicolas Eric Silva Jones pled guilty to felony driving under the influence (DUI), Idaho Code § 18-8004. The district court withheld judgment and placed Jones on probation for three years. Subsequently, Jones admitted to violating the terms of the probation, and the district court consequently revoked probation, imposed an underlying sentence of eight years with three years determinate, and placed Jones on probation for a new five-year period with the additional condition that Jones’s driver’s license be suspended. Thereafter, the State filed numerous petitions alleging Jones violated his probation.

In January 2022, the State filed a fourth petition to revoke Jones's probation alleging Jones violated his probation by (1) driving on one occasion; (2) refusing his probation officer's request to return to the district of his supervision, the Fifth District; (3) changing residence to the Fourth District without his probation officer's permission; (4) failing to return to the Fifth District after his travel permit expired; and (5) absconding from supervision. The district court held an evidentiary hearing to address these allegations. At that hearing, Jones's probation officers testified. One probation officer testified she saw Jones driving a large motor home and photographed him doing so, which photographs were admitted into evidence. Another probation officer testified Jones had moved to the Fourth District and was unwilling to return to the Fifth District.

Jones did not present any evidence at the hearing, but his counsel presented argument. Regarding the State's allegations that Jones left the Fifth District and remained in the Fourth District, Jones's counsel did not dispute these facts but rather argued Jones did so for health and severe weather reasons and that "he was basically stuck in Boise by necessity." Regarding the allegation that Jones was driving, Jones's counsel acknowledged that "we don't have a defense to that."

The district court noted that there was no evidence regarding Jones's explanation for remaining in the Fourth District, found the State met its burden on each of the five probation violation allegations, and concluded Jones violated his probation. Later, the court continued Jones on probation but ordered him to serve 180 days in the county jail as a sanction for violating his probation.

Jones timely appeals, contending the district court erred by concluding he violated his probation. He argues "there was no substantial evidence to support the district court's finding that [Jones] violated his probation," although he is "mindful that [Jones's] counsel conceded one of the alleged probation violations at the evidentiary hearing." Review of a probation revocation proceeding involves a two-step analysis. *State v. Garner*, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017). First, the trial court may revoke probation only upon evidence that the probationer has violated probation. *Id.* The appellate court will uphold a probation violation finding if substantial evidence supports that finding. *Id.* Second, whether to revoke probation is within the trial court's discretion. *Id.*

In determining whether to revoke probation a trial 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); *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 325, 327 (Ct. App. 1992); *Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (1988). 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.*

Applying the foregoing standards, and having reviewed the record in this case, we conclude that substantial evidence supports the district court's finding that Jones violated the terms of his probation and that the court did not abuse its discretion in revoking probation. Therefore, we affirm the district court's order continuing Jones's previously ordered probationary term following a sentence of 180 days.