

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 49762/49763/49764

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) **Filed: February 6, 2023**
)
 v.) **Melanie Gagnepain, Clerk**
)
 CLINTON BRADLEY JOHNSON,) **THIS IS AN UNPUBLISHED**
) **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.

Order revoking probation and executing underlying sentences, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Brian R. Dickson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before GRATTON, Judge; HUSKEY, Judge;
and BRAILSFORD, Judge

PER CURIAM

Clinton Bradley Johnson pled guilty to two counts of grand theft, Idaho Code §§ 18-2403 and 18-2407, in Docket Nos. 49762 and 49763. The district court imposed two concurrent sentences of four years with two years determinate, suspended the sentences and placed Johnson on probation for four years. Subsequently, Johnson admitted to violating the terms of the probation, and the district court reinstated Johnson’s probation for four years and ordered that he complete a substance abuse program. Johnson was later terminated from the substance abuse program and he admitted to again violating his probation. The district court revoked Johnson’s probation, executed the previously imposed sentences, and retained jurisdiction. After

completing the period of retained jurisdiction, the district court suspended Johnson's sentences and placed him on probation for three years.

Several months later in Docket No. 49764, Johnson pled guilty to possession of heroin with intent to deliver, I.C. § 37-2732(a)(1(A), entered an *Alford*¹ plea to introducing major contraband to jail, I.C. § 18-2510(3), and admitted to violating the terms of his probation in Docket Nos. 49762 and 49763. In Docket No. 49764 the district court imposed sentences of ten years with five years determinate for the intent to deliver charge and five years with three years determinate for the major contraband charge. All sentences were ordered to run concurrently. The district court also revoked Johnson's probation and imposed the sentences in Docket Nos. 49762 and 49763, and retained jurisdiction in all three cases. Following the period of retained jurisdiction, the district court suspended the sentences and placed Johnson on probation for three years.

Subsequently, Johnson admitted to again violating his probation and the district court reinstated a new three-year term of probation with the condition that Johnson complete Mental Health Court. Johnson was later terminated from Mental Health Court and the district court revoked Johnson's probation and placed him on a third period of retained jurisdiction. Following the period of retained jurisdiction, the district court suspended Johnson's sentences and placed him on probation for a period of three years.

Several months later, Johnson admitted to violating his probation by failing to comply with the rules of Mental Health Court. The district court again retained jurisdiction. Following the period of retained jurisdiction, the district court suspended Johnson's sentences and placed him on probation and ordered that he participate in the Drug and Mental Health Court programs. Johnson was terminated from Drug and Mental Health Court and he admitted to violating his probation. The district court revoked his probation and executed the previously imposed sentences without modification.

Johnson filed an Idaho Criminal Rule 35 motion which the district court denied. Johnson appeals, asserting that the district court abused its discretion by executing his underlying sentences without modification. Johnson does not challenge the district court's revocation of his probation.

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

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 upon revocation of probation. *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 in ordering execution of Johnson's sentences without modification. Therefore, the order revoking probation and directing execution of Johnson's previously suspended sentences is affirmed.