

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 42973, 42974 & 42975

STATE OF IDAHO, ) 2015 Unpublished Opinion No. 717  
 )  
Plaintiff-Respondent, ) Filed: November 17, 2015  
 )  
v. ) Stephen W. Kenyon, Clerk  
 )  
KEVIN E. MAYS, ) THIS IS AN UNPUBLISHED  
 ) OPINION AND SHALL NOT  
Defendant-Appellant. ) BE CITED AS AUTHORITY  
 )  
\_\_\_\_\_ )

Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Hon. Jeff M. Brudie, District Judge.

Orders revoking probation and executing previously suspended sentences, affirmed.

Sara B. Thomas, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Before MELANSON, Chief Judge; GRATTON, Judge;  
and HUSKEY, Judge  
\_\_\_\_\_

PER CURIAM

In Docket No. 42973, Kevin E. Mays pled guilty to stalking. I.C. §§ 18-7905(1)(a) and 18-7906(1)(a). The district court sentenced Mays to a unified term of five years, with a minimum period of confinement of two years, suspended the sentence and placed Mays on probation.

In Docket No. 42974, Mays pled guilty to injuring jails. I.C. § 18-7018. The district court sentenced Mays to a unified term of five years, with a minimum period of confinement of two years, to run concurrent with his stalking sentence. The district court suspended the

sentence and placed Mays on probation. Mays thereafter admitted to violating the terms of his probations, but the district court continued Mays on supervised probation.

In Docket No. 42975, Mays pled guilty to stalking. I.C. §§ 18-7905(1)(a) and 18-7906(1)(a). The district court sentenced Mays to a unified term of four years, with a minimum period of confinement of two years, to run concurrent with Mays's other sentences. The district court again suspended the sentences and placed Mays on probation.

May again admitted to violating his probation. The district court revoked probation, ordered execution of the underlying sentences, and retained jurisdiction. Following successful completion of his rider, the district court suspended the three sentences and placed Mays on probation.

Subsequently, Mays admitted to violating the terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentences. Mays appeals, contending that the district court abused its discretion in revoking probation.

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 Idaho Criminal Rule 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. *State v. Urrabazo*, 150 Idaho 158, 162, 244 P.3d 1244, 1248 (2010). 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.*

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 this case, we cannot say that the district court abused its discretion in revoking probation or in ordering execution of Mays's sentences without modification. Therefore, the order revoking probation and directing execution of Mays's previously suspended sentences are affirmed.