

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38003

STATE OF IDAHO,)	2011 Unpublished Opinion No. 547
)	
Plaintiff-Respondent,)	Filed: July 15, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
MATTHEW JAMES ELLIOTT,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Order revoking probation and requiring execution of unified ten-year sentence with four-year determinate term for possession of a controlled substance with intent to deliver, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jordan E. Taylor, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before GRATTON, Chief Judge; GUTIERREZ, Judge;
and MELANSON, Judge

PER CURIAM

Matthew James Elliott pled guilty to possession of a controlled substance with intent to deliver. Idaho Code § 37-2732(a)(1)(A). The district court imposed a unified ten-year sentence with a five-year determinate term and retained jurisdiction. Following the period of retained jurisdiction, the district court relinquished jurisdiction and ordered executed a reduced unified sentence of ten years with four years determinate. Thereafter, Elliott filed an Idaho Criminal Rule 35 motion which the district granted and retained jurisdiction for a second time. Following the second period of retained jurisdiction, the district court suspended the sentence and placed Elliott on probation for nine years. Subsequently, Elliott admitted to violating several terms of

the probation, and the district court consequently revoked probation and ordered execution of the sentence as previously modified. Elliott appeals, contending that the district court abused its discretion in revoking probation and that the sentence is excessive. The State contends that the district court lacked jurisdiction to order the second period of retained jurisdiction and, therefore, its order purporting to do so and its subsequent orders are void. We agree.

This Court exercises free review over the application and construction of statutes. *State v. Reyes*, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct. App. 2003). Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000). The language of the statute is to be given its plain, obvious, and rational meaning. *Burnight*, 132 Idaho at 659, 978 P.2d at 219. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation. *Escobar*, 134 Idaho at 389, 3 P.3d at 67. When this Court must engage in statutory construction, it has the duty to ascertain the legislative intent and give effect to that intent. *Rhode*, 133 Idaho at 462, 988 P.2d at 688. To ascertain the intent of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative history. *Id.* It is incumbent upon a court to give a statute an interpretation which will not render it a nullity. *State v. Beard*, 135 Idaho 641, 646, 22 P.3d 116, 121 (Ct. App. 2001). Constructions of a statute that would lead to an absurd result are disfavored. *State v. Doe*, 140 Idaho 271, 275, 92 P.3d 521, 525 (2004); *State v. Yager*, 139 Idaho 680, 690, 85 P.3d 656, 666 (2004).

Idaho Code § 19-2601 governs commutation, suspension, and withholding of sentences and includes subsections on retained jurisdiction and probation. Idaho Code § 19-2601(4) allows a district court to place a defendant on a second period of retained jurisdiction after a period of probation. Indeed, the Idaho Supreme Court recently held that “[t]he plain language of section 19-2601(4) unconditionally requires an intervening period of probation prior to ordering an additional period of retained jurisdiction.” *State v. Urrabazo*, 150 Idaho 158, 162, 244 P.3d 1244, 1248 (2010); *see also State v. Gill*, 150 Idaho 183, 186, 244 P.3d 1269, 1272 (Ct. App. 2010) (holding that the “plain meaning of ‘after a defendant has been placed on probation in a case’ from I.C. § 19-2601(4) leads us to conclude that a district court may order a second period

of retained jurisdiction only after a defendant has been placed on an intervening period of probation”).

In *Urrabazo*, the Idaho Supreme Court acknowledged that “[a]fter a person is convicted of a crime, a district court is empowered with several sentencing options,” including “imposing a sentence and retaining jurisdiction for a statutory period.” *Urrabazo*, 150 Idaho at 161, 244 P.3d at 1247. The Court noted that the “purpose of this period of retained jurisdiction is to provide an evaluation ‘of the offender’s potential for rehabilitation and suitability for probation.’” *Id.* (quoting *State v. Diggie*, 140 Idaho 238, 240, 91 P.3d 1142, 1144 (2004)). However, the Court also recognized that “pursuant to I.C. § 19-2601(4), a court may only retain jurisdiction for up to 180 days, except in special circumstances when a court may take up to 30 additional days to make its ultimate sentencing decision.” *Urrabazo*, 150 Idaho at 161, 244 P.3d at 1247 (footnote omitted). In other words, once a court has retained jurisdiction for the statutory period, its statutory alternatives at that point are to either relinquish jurisdiction or place the defendant on probation or, in extraordinary circumstances, extend its jurisdiction for “a reasonable time, not to exceed thirty (30) days, after the one hundred eighty (180) day period of retained jurisdiction has expired.” I.C. § 19-2601(4).

We conclude that because the district court failed to place Elliott on an intervening period of probation, as contemplated by I.C. § 19-2601(4), it could not order a second rider. *See Urrabazo*, 150 Idaho at 160-62, 244 P.3d at 1246-48. Consequently, Elliott was under the affirmative control of the Department of Correction. *See id.* at 163, 244 P.3d at 1249; I.C. § 19-2601(4) (“The prisoner will remain committed to the board of correction if not affirmatively placed on probation by the court.”). Therefore, the court’s subsequent orders purporting to suspend Elliott’s sentence and place him on probation are void for want of subject matter jurisdiction.

The district court was without jurisdiction to order the second period of retained jurisdiction, and, therefore, its subsequent orders are void. The district court’s order relinquishing jurisdiction and executing the modified ten-year sentence with four-year determinate term is affirmed.