IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46709

STATE OF IDAHO,)
) Filed: August 8, 2019
Plaintiff-Respondent,)
) Karel A. Lehrman, Clerk
v.)
) THIS IS AN UNPUBLISHED
BRADLEY J. ARMSTRONG,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
Defendant-Appellant.)
)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. Jonathan P. Brody, District Judge.

Order revoking probation, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Andrea W. Reynolds, 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; HUSKEY, Judge; and LORELLO, Judge

PER CURIAM

Bradley J. Armstrong pled guilty to felony driving under the influence. I.C. §§ 18-8004 and 18-8005. The district court sentenced Armstrong to a unified term of ten years, with a minimum period of confinement of six years, but after a period of retained jurisdiction, suspended the sentence and placed Armstrong on probation. Armstrong appealed his judgment of conviction, alleging that his sentence is excessive. This Court affirmed the sentence in an unpublished opinion. *State v. Armstrong*, Docket No. 44929 (Ct. App. Oct. 6, 2017). Subsequently, Armstrong admitted to violating the terms of the probation, and the district court retained jurisdiction. After successful completion of his second period of retained jurisdiction,

the district court again suspended the sentence and placed Armstrong on probation. Armstrong once again admitted to violating the terms of his probation, and the district court consequently revoked probation and ordered execution of the original sentence. Armstrong 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 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. 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*.

Applying these 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 Armstrong's sentence. Therefore, the order revoking probation and directing execution of Armstrong's previously suspended sentence is affirmed.