## IN THE COURT OF APPEALS OF THE STATE OF IDAHO

## **Docket No. 46988**

STATE OF IDAHO,	)
Plaintiff-Respondent,	) Filed: October 16, 2019
	) Karel A. Lehrman, Clerk
<b>v.</b>	)
	) THIS IS AN UNPUBLISHED
DAVID JOSEPH LOPEZ,	) OPINION AND SHALL NOT
	) BE CITED AS AUTHORITY
Defendant-Appellant.	)
	)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Deborah A. Bail, District Judge.

Order revoking probation, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Ben P. McGreevy, Deputy Appellate Public Defender, Boise, for appellant.

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

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

## PER CURIAM

David Joseph Lopez pled guilty to possession of methamphetamine, Idaho Code § 37-2732(c). In exchange for his guilty plea, additional charges were dismissed. The district court imposed a unified sentence of five years with one and one-half years determinate, suspended the sentence, and placed Lopez on probation for five years. Subsequently, Lopez admitted to violating the terms of the probation, and the district court consequently revoked probation, ordered execution of the original sentence and retained jurisdiction. Following the period of retained jurisdiction, the district court again suspended Lopez's sentence and placed him on probation for five years. A report of probation violation was filed, and Lopez admitted to

violating his probation terms. The district court revoked Lopez's probation and executed the underlying sentence. Lopez 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. I.C. § 19-2601. 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 cannot say that the district court abused its discretion either in revoking probation or in ordering execution of Lopez's sentence without modification. Therefore, the order revoking probation and directing execution of Lopez's previously suspended sentence is affirmed.