

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37907

STATE OF IDAHO,)	2011 Unpublished Opinion No. 470
)	
Plaintiff-Respondent,)	Filed: May 12, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
DUANE J. KRUM,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Robert C. Naftz, District Judge.

Order revoking probation and requiring execution of unified seven-year sentence with three-year determinate term for rape, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, 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; LANSING, Judge;
and GUTIERREZ, Judge

PER CURIAM

Duane J. Krum pled guilty to rape. I.C. § 18-6101(1). In exchange for his guilty plea, an additional charge was dismissed. The district court imposed a unified seven-year sentence with a three-year determinate term, but after a period of retained jurisdiction, suspended the sentence and placed Krum on probation. Subsequently, Krum admitted to violating several terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentence. Krum filed an I.C.R. 35 motion for reduction of sentence, which the district court denied. Krum appeals, contending that the district court erred in revoking probation, should have sua sponte reduced his sentence upon revocation of probation, and that his sentence is excessive.

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 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). 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 326, 834 P.2d at 328.

Upon revoking a defendant's probation, a court may order the original sentence executed or reduce the sentence as authorized by I.C.R. 35. *State v. Hanington*, 148 Idaho 26, 28, 218 P.3d 5, 7 (Ct. App. 2009). Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

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. *Hanington*, 148 Idaho at 29, 218 P.3d at 8. 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. The record in this case shows that the district court properly considered the information before it and determined that probation or modification of the sentence was not appropriate. Krum has failed to show that the district court abused its

discretion. Therefore, the order revoking probation and directing execution of Krum's previously suspended sentence is affirmed.