

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37751

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 648
	)	
<b>Plaintiff-Respondent,</b>	)	<b>Filed: October 3, 2011</b>
	)	
v.	)	<b>Stephen W. Kenyon, Clerk</b>
	)	
<b>BRANDON TYLER SAXMAN,</b>	)	<b>THIS IS AN UNPUBLISHED</b>
	)	<b>OPINION AND SHALL NOT</b>
<b>Defendant-Appellant.</b>	)	<b>BE CITED AS AUTHORITY</b>
	)	

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

Appeal from order revoking probation and requiring execution of unified ten-year sentence with two-year determinate term for sexual abuse of a child under the age of sixteen years, dismissed.

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.

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

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PER CURIAM

Brandon Tyler Saxman pled guilty to sexual abuse of a child under the age of sixteen years. I.C. § 18-1506. The district court imposed a unified ten-year sentence with a two-year determinate term, but suspended the sentence and placed Saxman on probation.

Saxman thereafter admitted to violating the terms of his probation on several occasions. The district court revoked Saxman’s probation and ordered execution of his original sentence, but retained jurisdiction. Following this period of retained jurisdiction, the district court entered an order retaining jurisdiction a second time. After Saxman’s second period of retained

jurisdiction, the district court entered an order suspending Saxman's sentence and again placed him on probation. Subsequently, Saxman admitted to violating several terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentence. Saxman appeals, contending that the district court abused its discretion in revoking probation and that the sentence is excessive.

We consider first the state's argument that Saxman cannot obtain relief because the district court had no jurisdiction to retain jurisdiction a second time and, hence, no jurisdiction to place Saxman on probation at the end of the second retained jurisdiction period. The state is correct.

The only authority for a trial court to place a defendant on a second period of retained jurisdiction within the same case is that provided in I.C. § 19-2601(4), which states, in part, that the trial court, "in its discretion may sentence a defendant to more than one (1) period of retained jurisdiction after a defendant has been placed on probation in a case." The Idaho Supreme Court has held that this statutory provision does not empower a court to place a defendant on successive periods of retained jurisdiction without an intervening period of probation. *State v. Urrabazo*, 150 Idaho 158, 244 P.3d 1244 (2010). The Court there said:

The plain language of section 19-2601(4) unconditionally requires an intervening period of probation prior to ordering an additional period of retained jurisdiction. The provision only permits a court to sentence a defendant to a second rider "after a defendant has been placed on probation in a case." In other words, a court may retain jurisdiction for a second time only after sentencing the defendant to a period of probation.

*Id.* at 162, 244 P.3d at 1248.

The Supreme Court further held that this limitation on the trial court's power in section 19-2601(4) is jurisdictional, and therefore the district court's orders granting Urrabazo a second rider and relinquishing jurisdiction thereafter were void for want of subject matter jurisdiction. Consequently, the Supreme Court found Urrabazo's appeal to be untimely. The Court explained:

Idaho Appellate Rule 14(a) states that an appeal in a criminal matter must be filed with the district court "within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment or order of the district court appealable as a matter of right . . . ." I.A.R. 14(a). Additionally, this rule provides that "the time to file an appeal is enlarged by the length of time the district court actually retains jurisdiction pursuant to Idaho Code. When the court releases its retained jurisdiction . . . the time within which to file a notice of appeal shall commence to run." *Id.* As such, the time for filing an appeal in this

case commenced with the district court's relinquishing jurisdiction over Urrabazo and Urrabazo had to file his appeal within 42 days of that time in order for the appeal to be timely. Because Urrabazo's appeal was not filed until September 8, 2006, it is untimely, and this Court will not consider the merits of the appeal.

*Urrabazo*, 150 Idaho at 163, 244 P.3d at 1249.

Saxman's case is indistinguishable from *Urrabazo*. Therefore, his appeal is dismissed as untimely.