

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 37802/37803

STATE OF IDAHO,)	2011 Unpublished Opinion No. 522
)	
Plaintiff-Respondent,)	Filed: June 16, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
CURTIS A. PENNINGTON,)	THIS IS AN UNPUBLISHED OPINION
)	AND SHALL NOT BE CITED AS
Defendant-Appellant.)	AUTHORITY
)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Hon. Jeff M. Brudie, District Judge.

Orders revoking probation and requiring execution of unified four-year sentence with one-year determinate term for grand theft, and execution of unified three-year sentence with one-year determinate term for forgery, affirmed

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, 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

In this consolidated appeal, Curtis A. Pennington pled guilty to one count of grand theft by deception, Idaho Code §§ 18-2403(2)(a)(e), 18-2407(1)(b)(1) in case number 37802, and to three counts of forgery, Idaho Code § 18-3601 in case number 37803. The district court imposed a unified four-year sentence with a one-year determinate term for one count of grand theft in case number 37802, and a unified three-year sentence with one-year determinate term on each count of forgery in case number 37803. The district court ordered that the sentences for the forgeries run concurrently with each other, but consecutively to the sentence for grand theft. The district court retained jurisdiction in both cases, and after a period of retained jurisdiction, suspended the

sentences and placed Pennington on supervised probation for a period of four years in case number 37802 and for three years in case number 37803. Subsequently, Pennington was found to have violated the probationary terms, and the district court consequently revoked probation in each case and ordered execution of the original sentences. Pennington appeals, contending that the district court abused its discretion in revoking probation and that the sentences are 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 325, 834 P.2d at 327; *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 325, 834 P.2d at 327.

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a 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. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *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. *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 the probation. *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 Pennington's original sentences without modification. Therefore, the orders revoking probation and directing execution of Pennington's previously suspended sentences are affirmed.