

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 38086/38087/38098

STATE OF IDAHO,)	2011 Unpublished Opinion No. 565
)	
Plaintiff-Respondent,)	Filed: July 29, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
JENNIFER LEE SAYER,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

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

Order revoking probation and requiring execution of concurrent unified sentences of seven years, with two years determinate, for grand theft; seven years, with three years determinate, for possession of a controlled substance; nine years, with four years determinate for forgery; ten years with six years determinate, for grand theft by possession of stolen property, affirmed; judgment of conviction and consecutive unified sentence of ten years with one year determinate for burglary, affirmed.

Molly J. Huskey, State Appellate Public Defender; Shawn F. Wilkerson, 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

In these consolidated appeals, Jennifer Lee Sayer pled guilty to grand theft, Idaho Code §§ 18-2403(1), 18-2407(1)(b); and possession of a controlled substance, I.C. § 37-2732(c) in Docket No. 38098. The district court withheld the judgment and placed Sayer on supervised probation for a period of six years. Approximately ten months later, Sayer was arrested and subsequently pled guilty to forgery, I.C. § 18-3601, and grand theft by possession of stolen

property, I.C. §§ 18-2403(4), 18-2407(1) in Docket No. 38087, and Sayer also admitted to violating several terms of the supervised probation in Docket No. 38098.

In Docket No. 38098 the district court revoked Sayer's probation and withheld judgment; imposed concurrent unified sentences of seven years, with two years determinate, for grand theft and seven years, with three years determinate, for possession of a controlled substance and retained jurisdiction. In Docket No. 38087 the district court imposed concurrent unified sentences of nine years, with four years determinate for forgery, and ten years with six years determinate, for grand theft by possession of stolen property and retained jurisdiction. Following the period of retained jurisdiction in both cases, the district court placed Sayer on probation.

While on supervised probation, Sayer was again arrested and pursuant to a plea agreement pled guilty to burglary, I.C. § 18-1401 in Docket No. 38086. The district court imposed a unified sentence of ten years with one year determinate. Sayer also admitted to probation violations and the district court revoked Sayer's supervised probation in Docket Nos. 38098 and 38087 and executed the underlying concurrent sentences in those cases. Sayer's sentence in Docket No. 38086 was ordered to be served consecutively to the sentences imposed in Docket Nos. 38098 and 38087.

Sayer appeals, contending that the district court abused its discretion in revoking probation and ordering the underlying sentences executed in Docket Nos. 38098 and 38087 without sua sponte reducing the sentences. Sayer also asserts that the district court abused its discretion by ordering the sentence in Docket No. 38086 to run consecutive to the sentences in Docket Nos. 38098 and 38087.

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 in revoking Sayer's probation, failing to sua sponte reduce the sentences upon revoking her probation, or in ordering the sentence in Docket No. 38086 to run consecutively with the sentences in Docket Nos. 38098 and 38087. Therefore, the orders revoking probation and directing execution of Sayer's previously suspended sentences in Docket Nos. 38098 and 38087 are affirmed. The judgment of conviction and commitment directing that the sentence in Docket No. 38086 run consecutively with the sentences in Docket Nos. 38098 and 38087 is affirmed.