IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 40383

STATE OF IDAHO,	)	**2013 Unpublished Opinion No. 562**
	)	
Plaintiff-Respondent,	)	**Filed: July 2, 2013**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
NORMAN LAKE DYE, JR.,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. Jonathan P. Brody, District Judge.

Order revoking probation and requiring execution of unified five-year sentence with one and one-half-year determinate term for felony battery on a law enforcement officer, affirmed.

Sara B. Thomas, State Appellate Public Defender; Ben P. McGreevy, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Norman Lake Dye, Jr. was convicted of felony battery on a law enforcement officer, Idaho Code §§ 18-903(a), 18-915(d); and misdemeanor operating a motor vehicle while under the influence of intoxicating beverages and/or drugs, second offense, I.C. §§ 18-8004, 18-8005(4).[1] On the battery charge, the district court imposed a unified five-year sentence with a one and one-half-year determinate term, but after a period of retained jurisdiction, suspended the

[1] On the misdemeanor DUI charge, the district court imposed a sentence of 180 days in jail with 170 days suspended and credit for one day of time served to run concurrently with the battery sentence.

sentence and placed Dye on probation for four years. Subsequently, Dye admitted to violating several terms of the probation. The district court revoked probation and, following a second period of retained jurisdiction, suspended the sentence and again placed Dye on probation for four years. Another report of probation violation was filed and the district court consequently revoked probation and ordered execution of the original sentence without reduction. Dye appeals, contending that the district court abused its discretion in revoking probation and in failing to sua sponte reduce his sentence upon revocation.

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 is 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). The court may also order a period of retained jurisdiction. *State v. Urrabazo*, 150 Idaho 158, 162, 244 P.3d 1244, 1248 (2010). 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.*

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 Dye's original sentence without modification. Therefore, the order revoking probation and directing execution of Dye's previously suspended sentence is affirmed.