

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 24 1980

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CLERK SUPREME COURT

DAVID LEE TACKETT,

)

Plaintiff-Appellant,

)

Filed June 24, 1980

vs.

)

STATE OF IOWA,

)

0-161

63775

Defendant-Appellee.

)

Appeal from Union District Court - A. V. Hass, Judge.

Postconviction applicant appeals from trial court order dismissing his application seeking relief from the revocation of his probation and resulting incarceration.
AFFIRMED.

Marion E. James of Creston, Iowa, for plaintiff-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Postconviction applicant (defendant) appeals from trial court order dismissing his application seeking relief from the revocation of his probation and resulting incarceration. Defendant's claim in the court below and in this court asserts that the period of probation, which was imposed at his original sentencing, had expired prior to the application for revocation and that the court therefore lacked jurisdiction to revoke or extend his probation.

The trial court denied defendant's application on two grounds. First, it determined that because the original sentencing order was not effective until entered in the district court record, the period of probation provided in said order was to be measured from the date of entry of judgment rather than the date of rendition of judgment. If the time is so measured, the State's application for revocation and the resulting order extending defendant's probation were both within the period fixed by the original sentencing order. Second, the trial court determined that because section 789A.2, The Code 1973, required a minimum of two years probation, the original sentencing order fixing a one year period of probation was invalid and subject to correction at any time. We find merit in both contentions and accordingly find no error in the trial court's order denying postconviction relief. Authorities supporting the first ground for denial include State v. Shilinsky, 248 Iowa 596, 602, 81 N.W.2d 444, 447 (1957); State v. Barlow, 242 Iowa 714, 719, 46 N.W.2d 725, 728 (1951); State v. Wieland, 217 Iowa 887, 897, 251 N.W. 757, 761 (1933). Authorities supporting the second ground for denial include Shilinsky, 248 Iowa at 602, 81 N.W.2d at 447; State v. Young, ___ N.W.2d ___, ___ (Iowa 1980) (filed May 21, 1980); State v. Wiese, 201 N.W.2d 734, 737 (Iowa 1972).

We have considered all issues presented and find no basis for reversal.

AFFIRMED.