

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA SANDOVAL-HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55143

FILED

JUN 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order rescinding diversion, revoking probation and imposing sentence. Seventh Judicial District Court, Lincoln County; Steve L. Dobrescu, Judge.

Appellant Sandra Sandoval-Hernandez claims the district court abused its discretion by revoking her probation, specifically contending that she was denied her due process right to confrontation because the district court admitted affidavits of the three people who transported and conducted evidentiary tests on her blood samples without requiring the State to call them as witnesses.

The decision to revoke probation is within the broad discretion of the district court, and will not be disturbed absent a clear showing of abuse. Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). After weighing the difficulty of securing the witnesses' live testimony against Sandoval-Hernandez's interest in confronting and cross-examining the primary sources of information to be used against her, the district court admitted the affidavits. See Anaya v. State, 96 Nev. 119, 123, 606 P.2d

156, 158 (1980). Sandoval-Hernandez failed to demonstrate the district court abused its discretion because she was able to confront the primary witness against her. Officer Nutzman arrested Sandoval-Hernandez for DUI and was the primary source of the information used against her at the revocation hearing. Officer Nutzman testified that he stopped Sandoval-Hernandez for speeding and failing to stop at a stop sign; her vehicle was not fitted with an interlock ignition device; there was an open container of beer sitting in her console; her breath smelled of alcohol; her eyes were red, watery, and bloodshot; her speech was slow and slurred; she failed three field sobriety tests; and she admitted that she had previously been drinking. Based on this testimony, the district court found that Sandoval-Hernandez's conduct was not as good as required by the conditions of her probation. See Lewis, 90 Nev. at 438, 529 P.2d at 797. The concentration of alcohol of Sandoval-Hernandez's blood was not necessary to establish a substantive violation of a probation condition, and the ultimate result of revocation would have been the same had the challenged affidavits not been admitted. See Jaeger v. State, 113 Nev. 1275, 1282-83, 948 P.2d 1185, 1190 (1997) (holding there was no confrontation violation when person who conducted evidentiary test was not called as a witness when multiple separate and independent grounds supported revocation). Thus, even assuming Sandoval-Hernandez was deprived of her right to confront the individuals who transported and conducted tests on her blood, the error was harmless. See Franco v. State, 109 Nev. 1229, 1237, 866 P.2d 247, 252 (1993) (hearsay and Confrontation Clause errors are subject to harmless error analysis). Therefore, we

conclude that the district court did not abuse its discretion by revoking Sandoval-Hernandez's probation, and we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General/Carson City
Lincoln County District Attorney
Lincoln County Clerk