

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELODY ANN SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60104

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking probation. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On July 22, 2011, appellant was convicted, pursuant to a guilty plea, of battery with a deadly weapon. The district court sentenced her to a prison term of 36 to 96 months, ordered the sentence suspended, and placed her on probation for a period not to exceed 60 months. A few months later, the Department of Parole and Probation (P&P) filed a violation report, and, on December 23, 2011, after conducting a hearing, the district court entered an order revoking appellant's probation and imposing the original sentence with credit for time served.

Appellant argues that the district court abused its discretion by revoking her probation because its decision was based entirely on hearsay, mandating reversal under Anaya v. State, 96 Nev. 119, 606 P.2d 156 (1980), and the State did not prove that she violated her probation because the terms of the probation agreement were vague. Appellant's revocation is based on three violations—she (1) was discharged from two substance abuse treatment facilities due to misconduct, (2) failed to

provide verification of employment or enrollment in school, and (3) failed to pay monthly supervision fees. Appellant's complaint on appeal focuses on her discharge from the substance abuse treatment facilities. In this, she contends that the evidence explaining the grounds for her discharge from the substance abuse treatment facilities was based solely on multiple hearsay.

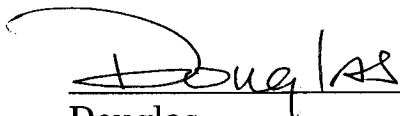
The decision to revoke probation is within the broad discretion of the district court and will not be disturbed absent a clear showing of abuse. Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974) Evidence supporting a decision to revoke probation must be merely sufficient to reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation. Id. However, "[d]ue process requires, at a minimum, that a revocation be based upon 'verified facts' so that 'the exercise of discretion will be informed by an accurate knowledge of the [probationer's] behavior.'" Anaya, 96 Nev. at 122, 606 P.2d at 157 (alteration in original) (quoting Morrissey v. Brewer, 408 U.S. 471, 484 (1972)).

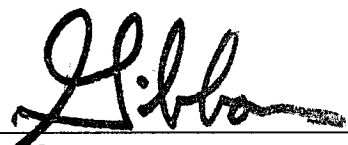
Our review shows that the district court's decision is supported by the record. Although hearsay evidence was introduced to explain the reasons why appellant was discharged from the substance abuse facilities, the district court focused on her discharge from those facilities, not the underlying misconduct, as a basis for revocation. Therefore, we reject appellant's contention that revocation was based solely on multiple hearsay. Further, considering the probation agreement along with the special conditions of probation, we reject appellant's claim that the terms of her probation term were vague.

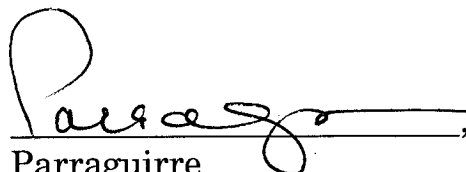
Even assuming error in this instance, appellant's revocation was based on two other violations, neither of which she challenges on appeal. We conclude that the evidence shows that appellant's conduct was not as good as required by the conditions of probation, and therefore the district court did not abuse its discretion by revoking appellant's probation.

Having considered appellant's arguments and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk