

IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTIE MAE WIEBE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62742

FILED

SEP 19 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angersu*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence with two or more prior convictions. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

Appellant Kristie Mae Wiebe contends that the district court abused its discretion by revoking her probation, terminating her from a DUI diversion program, and entering a judgment of conviction because insufficient evidence was presented to establish that she violated a condition of her probation by consuming ethanol.¹ Wiebe seems to allege that one of the two biomarkers used to establish that she consumed ethanol was unreliable because it was not confirmed by eyewitness testimony and did not specify exactly when she consumed the intoxicant. The district court's decision to revoke probation will not be disturbed absent an abuse of discretion. *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). At the revocation hearing, the district court heard expert

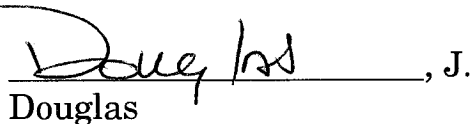
¹We disagree with the State's assertion that we lack jurisdiction to hear this claim. See NRS 177.015(3); NRS 177.045; NRS 484C.340(5)(b).

testimony that two reliable biomarkers were used together to determine that Wiebe consumed ethanol within 48 hours of testing and the results indicated it was not incidental exposure. We conclude that Wiebe fails to demonstrate that the district court abused its discretion by determining that her conduct was not as good as required, revoking her probation, terminating her from the diversion program, and entering the judgment of conviction. *See id.*; NRS 484C.340(5)(b). Accordingly, we

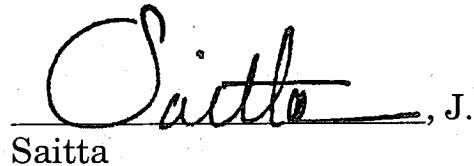
ORDER the judgment of conviction AFFIRMED.²



Gibbons



Douglas



Saitta

cc: Hon. Nancy L. Porter, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk

²Although we filed the fast track statement and response, they fail to comply with the Nevada Rules of Appellate Procedure because the fast-track statement's margins are not at least 1-inch on all four sides and the response is not double-spaced. *See* NRAP 3C(h)(1); NRAP 32(a)(4) We caution counsel for both parties that future failure to comply with the Nevada Rules of Appellate Procedure may result in the imposition of sanctions. *See* NRAP 3C(n).