

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHELE YOLANDA VANARMAN,
A/K/A MICHELLE YOLANDA
VANARMAN, A/K/A MICHELLE
YOLANDA MOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80611-COA

FILED

FEB 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY _____
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Michele Yolanda Vanarman appeals from a judgment of conviction, entered pursuant to a guilty plea, of driving under the influence (DUI) with two or more prior convictions. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

Vanarman argues the district court violated her due process rights by sentencing her to prison without holding a probation revocation hearing. Due process protections for revocation proceedings require the probationer to be provided with: (1) written notice of the claimed violations; (2) disclosure of the evidence used against her; (3) an opportunity to be heard in person and to present witnesses and testimony; (4) the right to confront and cross-examine adverse witnesses; (5) a hearing in front of a neutral and detached hearing body; and (6) a written statement by the factfinder as to the evidence relied on and the reasons for revocation. *See* NRS 176A.600; *Morrissey v. Brewer*, 408 U.S. 471, 488-89 (1972). "A due process violation at a revocation proceeding is subject to harmless error analysis." *Id.*

On January 15, 2020, Vanarman attended a hearing at which the district court revoked her probation and resentenced her. At that hearing, Vanarman was afforded the due process protections outlined in NRS 176A.600 and *Morrissey*. In support of her argument that she did not receive a hearing, Vanarman points to the last sentence of the district court's order of termination from DUI diversion, filed on February 5, 2020, requiring Vanarman to appear for a "Probation Violation Allegation Hearing" at a later date. No further hearing was held regarding the revocation of probation. In light of the events of the January hearing, the order's reference to a later hearing appears to be a typographical error. And any error that resulted from not holding a later hearing was harmless since Vanarman already received the required due process protections during the January hearing.

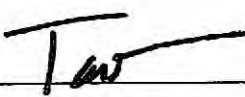
Vanarman also contends the district court abused its discretion by removing her from the DUI diversion court program and sentencing her to prison. The decision to revoke probation is within the broad discretion of the district court, and will not be disturbed absent a clear showing of abuse. *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). Evidence supporting a decision to revoke probation must merely be 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.*

Despite being enrolled in the DUI diversion program for over 3 years, Vanarman was found in her home having consumed 10 or 11 beers, in violation of the specific term of probation against consumption of alcohol. Additionally, the evidence suggested this was not Vanarman's first time violating the term against drinking alcohol. This was enough to reasonably satisfy the district court that Vanarman was not as good as the terms

required. Therefore, we conclude the district court did not abuse its discretion in revoking Vanarman's probation. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Fourth Judicial District Court, Dept. 1
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk