IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSICA ELIZABETH HOCKENBERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88365-COA

ORDER OF AFFIRMANCE

Jessica Elizabeth Hockenberry appeals from a judgment of conviction, entered pursuant to a no contest plea, of possession of a Schedule I or II controlled substance. Fourth Judicial District Court, Elko County; Mason E. Simons, Judge.

Hockenberry pleaded no contest to possession of a controlled substance, a violation of NRS 453.336(2)(a), and elected to defer judgment pursuant to NRS 176.211(3)(a)(1). As a result, the district court deferred the adjudication and placed Hockenberry on probation as a condition of her deferred judgment.[1] *See* NRS 176.211(2)(f). Subsequently, the Division of Parole and Probation filed a violation report alleging that Hockenberry had been arrested for possession of fentanyl pills. The district court held an evidentiary hearing on the violation, during which two police officers testified: Corporal J. Taylor and Detective B. Pepper. The district court

[1]Hockenberry did not include the district court's order deferring adjudication in the record on appeal. Nonetheless, the parties do not dispute that Hockenberry was placed on probation as a condition of the deferred judgment.

determined that it was reasonably satisfied that Hockenberry violated the terms of her probation. As a result, it issued an order revoking deferral of adjudication, held a sentencing hearing, and entered the instant judgment of conviction.

On appeal, Hockenberry argues the district court abused its discretion by revoking her probation. Specifically, Hockenberry argues her due process rights were violated because the district court revoked her probation on the basis that she possessed pills that were controlled substances, but the State failed to call a witness who was qualified to identify the pills as controlled substances.

A district court may revoke probation and deferral and enter a judgment of conviction if the defendant violates a term or condition set forth for the defendant during the deferral period. NRS 176.211(4)(a)(1). The State need not prove a probation violation beyond a reasonable doubt; rather, it need only present evidence so as to "reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation."[2] *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). Although the district court has broad discretion in deciding whether to revoke probation, *id.*, due process requires "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 v. State*,

[2]The parties do not dispute that the legal standards generally applicable to probation revocation proceedings apply to the instant matter and, thus, we address it as such. *See State v. Eighth Jud. Dist. Ct. (Doane)*, 138 Nev., Adv. Op. 90, 521 P.3d 1215, 1221 (2022) (recognizing the Nevada appellate courts "follow the principle of party presentation" and thus "rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present" (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))).

96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (internal quotation marks omitted).

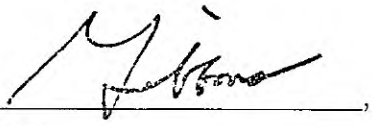
Corporal Taylor and Detective Pepper testified at the hearing as follows. The officers searched Hockenberry's person and vehicle, which revealed 2 pills on Hockenberry's person and 165 pills in a backpack located in the vehicle. The officers testified that the pills were small blue pills labeled M30 and that they believed the pills contained fentanyl. They testified that they were familiar with fentanyl, had received training regarding fentanyl, and had seen thousands of pills. They also testified that although the M30 label refers to either hydrocodone or oxycodone, they knew from press releases and previous cases that fentanyl pills are most commonly in the form of counterfeit blue M30 pills. Corporal Taylor testified that when he pulled a pill out of Hockenberry's jacket pocket, Hockenberry denied ownership of the pill and the jacket. Both officers testified that they were not sure whether the pills had been sent to a lab for testing.

The officers' testimonies indicated that the pills found on Hockenberry's person and in her vehicle were either fentanyl, hydrocodone, or oxycodone, all of which are Schedule II controlled substances. *See* NAC 453.520(2)-(3). Hockenberry did not present any evidence indicating the pills were anything other than a controlled substance or that they had been prescribed to her. In light of the testimony presented, the district court could reasonably find that Hockenberry was in possession of a substance not allowed by the terms of the deferred judgment.

Further, Hockenberry fails to demonstrate that the State was required to call a toxicologist or other expert to testify as to the identity of the substances in the pills. The officers' testimonies that Hockenberry

possessed blue M30 pills, that fentanyl pills are most commonly in the form of counterfeit blue M30 pills, and that authentic blue M30 pills contain a different controlled substance, were based on their personal observations, experience, and training. Thus, even if the pills were not tested, the district court's decision to revoke deferral was based upon verified facts indicating Hockenberry possessed a substance not allowed by the terms of the deferred judgment. Therefore, we conclude Hockenberry's due process rights were not violated and that the district court did not abuse its discretion by revoking the deferral of judgment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Mason E. Simons, District Judge
Ben Gaumond Law Firm, PLLC
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk