

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GINGER LEIGH MCCALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90009-COA

FILED

AUG 25 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY DM Jones
DEPUTY CLERK

ORDER VACATING AND REMANDING

Ginger Leigh McCall appeals from an order for revocation of probation and amended judgment of conviction. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.¹

McCall argues the district court abused its discretion at the probation revocation hearing when it relied on facts not in the record to revoke her probation. McCall argues the district court erroneously determined that, at the time of the probation violation report and the hearing in 2024, she was continuing to use controlled substances and that she committed a new crime while under the influence of controlled substances.

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

¹We note that Senior Judge David Barker presided over the probation revocation hearing and made the decision to revoke McCall's probation.

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.² *Id.* “Due 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 v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972)).

At the revocation hearing, McCall stipulated that she violated her probation by committing a new crime, failing to complete counseling, failing to obtain or provide proof of employment, and failing to pay supervision and court fees. There was no allegation nor was there any evidence presented that McCall continued to use controlled substances after she tested positive in 2021 or that she was under the influence at the time she committed her new crime. Despite that, the district court found that

²We note that McCall committed her offense prior to the effective date of 2019 legislative amendments regarding probation, including the amendments distinguishing between technical and nontechnical violations of probation, *see* 2019 Nev. Stat., ch. 633, § 35, at 4401-03; § 137, at 4488, and the legislature gave no indication that it intended the amendments to apply retroactively, *see United States v. Brown*, 59 F.3d 102, 104 (9th Cir. 1995) (“Revocation of parole or probation is regarded as reinstatement of the sentence for the underlying crime, not as punishment for the conduct leading to the revocation.”); *Johnson v. United States*, 529 U.S. 694, 701 (2000) (“[P]ostrevocation penalties relate to the original offense.”); *State v. Second Jud. Dist. Ct. (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008) (“It is well established that under Nevada law, the proper penalty is the penalty in effect at the time of the commission of the offense and not the penalty in effect at the time of sentencing.”).

McCall's probation should be revoked because she continued to use controlled substances and because she was under the influence when she committed her new crime. Specifically, the district court stated:


My decision now is more based upon the fact she continues to use narcotics and continues to commit crimes while she's under the influence. That's my concern. She remains in the community, victimizing, taking advantage of that opportunity and still using drugs. I don't see growth that way. Therefore, based upon those factors I'm going to impose the 12 to 36 months in the Nevada Department of Corrections. I'm going to make a finding under 184 that she's a drug addict and that to the limited extent the executive branch has the ability to give her some treatment that she -- those opportunities should be open to her.

The district court's statement indicates that the reason it revoked probation was because McCall continued to use controlled substances. However, there is no evidence or testimony in the record to support this finding by the district court; thus, the finding is not supported by verified facts.³ Therefore, the record does not demonstrate the district court had accurate knowledge of McCall's behavior while on probation. As

³We note that McCall's stipulation to the probation violations merely allowed the district court to consider revocation. *See* 1997 Nev. Stat., ch. 654, § 2 at 3237-38 (setting out options for the district court to consider if it finds a violation of probation). The decision to revoke probation was still within the discretion of the district court. Here, the district court relied on unverified facts that McCall continued to use controlled substances when exercising its discretion to revoke McCall's probation. Thus, we conclude the district court abused its discretion.

a result, we conclude the district court abused its discretion in revoking McCall's probation, and we

ORDER the order for revocation of probation and amended judgment of conviction VACATED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Erika D. Ballou, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk