

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARYBETH NEYHART A/K/A  
MARIBETH NEYHART,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40689

FILED

JUN 05 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a district court order revoking appellant Marybeth Neyhart's probation.

On August 5, 2002, Neyhart was convicted, pursuant to a guilty plea, of one count of attempted forgery. The district court sentenced Neyhart to serve a prison term of 19 to 48 months and then suspended execution of the sentence, placing Neyhart on probation for a period not to exceed 3 years.

On October 23, 2002, the State filed a notice of intent to seek revocation of Neyhart's probation. The State alleged that Neyhart had violated the laws and conduct condition of her probation on October 10, 2002, when she was arrested for possession of stolen property, identity theft, burglary, forgery, and theft.

A probation revocation proceeding was held on November 19, 2002. At that hearing, defense counsel conceded that Neyhart had been arrested for new charges, but argued that the arrest standing alone was insufficient to revoke her probation. The district court then inquired whether the prosecutor had witnesses to testify about the circumstances surrounding the new charges. The prosecutor responded that both

Neyhart's probation officer and the detective involved in the arrest were available to testify to exactly what happened. The district court then informed Neyhart:

I don't know if you want to modify or make a deal but if you don't I'm going to proceed, hear the officers, and if I'm reasonably satisfied that she's committed [these offenses] she's going to [prison].

(Emphasis added.) Neyhart then reached an agreement with the State, which was set forth on the record at the probation revocation proceeding. Neyhart's counsel explained: "she's willing to stipulate to the fact that she was arrested and did violate her probation and the State is willing to modify [her sentence] if the court accepts that, to a 12 to 32 months sentence." Thereafter, Neyhart admitted "to the facts and circumstances that she was arrested."<sup>1</sup> The district court accepted Neyhart's admission and revoked her probation, noting for the record that the officers were present to testify "and make [the court] reasonably satisfied that she committed these crimes." Pursuant to the stipulation between the State and Neyhart, the district court also entered an amended judgment of conviction, reducing Neyhart's sentence to a prison term of 12 to 32 months. Neyhart filed the instant appeal, challenging the district court order revoking her probation.

Neyhart contends that the district court abused its discretion in revoking her probation based merely on her admission that she was arrested on new charges, because "[i]t is fundamentally inconsistent with

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<sup>1</sup>In particular, the district court stated: "you admit to the facts and circumstances that you were arrested? I'm not saying you're guilty but you were arrested for these charges." Neyhart responded in the affirmative.

the presumption of innocence in the American Justice system for a grant of probation to be revoked for a new arrest without some showing, however slight, that the new offense was actually committed.” In support of her contention, Neyhart cites case law from other jurisdictions holding that evidence of an arrest standing alone is insufficient to revoke a defendant’s probation, but rather the State must show, by a preponderance of the evidence, that the defendant actually committed a crime.<sup>2</sup> We conclude that the district court did not abuse its discretion in revoking Neyhart’s probation.

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.<sup>3</sup> 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.<sup>4</sup>

Here, the record of the probation revocation proceeding indicates that, pursuant to an agreement with the State, Neyhart stipulated to the fact that she was arrested in violation of her probation in exchange for a reduced sentence. The record further reveals that absent Neyhart’s stipulation, the State was prepared to present witnesses to testify about the circumstances underlying Neyhart’s arrest, thereby

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<sup>2</sup>See, e.g. Nicholson v. State, 440 So. 2d 1205 (Ala. Crim. App. 1983); Anderson v. State, 624 So. 2d 362 (Fla. Dist. Ct. App. 1993); State v. Rexford, 658 So. 2d 27 (La. Ct. App. 1995); People v. Buckner, 302 N.W.2d 848 (Mich. Ct. App. 1980); Wester v. State, 542 S.W.2d 403 (Tex. Crim. App. 1976).

<sup>3</sup>Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974).


<sup>4</sup>Id.

providing the district court with evidence sufficient to satisfy it that Neyhart's conduct was not as good as required by the conditions of probation. Accordingly, we conclude that the district court did not abuse its discretion in revoking Neyhart's probation.

Having considered Neyhart's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Joseph T. Bonaventure, District Judge  
Clark County Public Defender  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk