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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0612**

State of Minnesota,
Respondent,

vs.

Laura Cerda,
Appellant.

**Filed December 14, 2020
Affirmed in part, reversed in part, and remanded; motion denied
Frisch, Judge**

Olmsted County District Court
File Nos. 55-CR-15-7956, 55-CR-17-8587

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Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and Frisch, Judge.

UNPUBLISHED OPINION

FRISCH, Judge

In this direct appeal, appellant argues that the district court abused its discretion by revoking her probation and erred by failing to account for statutory amendments when

imposing her sentences. We affirm the district court's revocation decision but reverse and remand for resentencing in accordance with the Minnesota Drug Sentencing Reform Act.

FACTS

Appellant Laura Cerda pleaded guilty in April 2016 to second-degree sale of a controlled substance and first-degree possession of a controlled substance arising out of two incidents that occurred in November 2015. The district court recorded two possession convictions and sentenced Cerda in July 2016. *See* Minn. Stat. §§ 152.021, subd. 2(a)(1), .022, subd. 2(a)(1) (2014). Pursuant to the parties' plea agreement, the district court granted a dispositional departure from the Minnesota Sentencing Guidelines, stayed imposition of the sentences, and placed Cerda on probation. The district court ordered Cerda to comply with conditions of probation, including that she refrain from (1) possessing or using alcohol or drugs, (2) in-person contact with her codefendant, and (3) any driver's-license-related violations.

In December 2016, Cerda admitted to violating probation by using alcohol and marijuana, failing to follow work-release protocols, and twice having contact with her codefendant. The district court continued the stay of imposition, advising Cerda that it hoped she could "right the ship," and warning her, "[Y]ou could've gone to prison, and you need to understand that you either do this right or that's where you're going to end up."

In December 2017, Cerda admitted to violating probation again, this time by driving after suspension, driving after revocation, and failing to report police contacts to probation. After a contested hearing on additional alleged violations, the district court found that

Cerda also violated probation by contacting her codefendant and by failing to report an address change. The district court revoked the stay of imposition, pronounced concurrent 52- and 102-month sentences, and stayed execution of the sentences. The district court again warned Cerda, “You are going to prison if you cannot get with the program, start working with [corrections], and mak[e] some life changes.”

In December 2018, a jury found Cerda guilty of one gross-misdemeanor count of falsely reporting a crime by law enforcement, in violation of Minn. Stat. § 609.505, subd. 2(a)(2) (2016).

Cerda pleaded guilty in March 2019 to one controlled-substance crime, in violation of Minn. Stat. § 152.097, subd. 1(3) (2016), admitting that she sold, transferred, or delivered a simulated controlled substance to an informant. The district court adjudicated the conviction, stayed imposition of the sentence, and placed her on supervised probation.

Cerda admitted probation violations in October 2019 based on unpermitted out-of-state travel, her convictions for selling a simulated controlled substance and falsely reporting a crime by law enforcement, and additional charged conduct of possessing a controlled substance and interfering with a police officer. The district court ordered Cerda to complete an updated chemical-dependency assessment and enroll in the Minnesota Teen and Adult Challenge Program (Teen Challenge). The district court again warned Cerda of possible consequences for failure to comply with probationary requirements.

Corrections filed a final probation-violation report in early December 2019, alleging that Cerda had been discharged from Teen Challenge for violating multiple rules and had therefore failed to successfully complete programming. Cerda admitted that she

intentionally and inexcusably violated a term of her probation by failing to complete Teen Challenge but requested a contested hearing to determine whether the need for confinement outweighed the policies favoring probation.

At the contested hearing, the state relied on the probation-violation report and the discharge report, which described Cerda's previous probation violations and the circumstances of her discharge from Teen Challenge. Specifically, the reports detailed Cerda's struggles in adjusting to the requirements of Teen Challenge, her lack of motivation, her attempts to conceal her possession of two cell phones in violation of program rules, lies she told to Teen Challenge staff, and an incident in which she used expletives toward staff. Corrections recommended execution of the remainder of Cerda's sentences.

Cerda submitted an updated chemical-dependency assessment and testified in her own defense. She explained that a genetic connective-tissue disorder had caused her severe complications including constant pain, arthritis, difficulty eating, and extensive limitations on physical activities. Cerda testified that she struggled with depression as a result of her diagnosis and agreed that she would benefit from therapy. She stated that, before entering Teen Challenge, she had never been involved in any other inpatient chemical-dependency program. And by the time of her hearing, Cerda informed the district court that she had been accepted into a new treatment program.

The district court found that returning Cerda to probation would unduly depreciate the seriousness of her violation and that the policies favoring probation were outweighed by the need for incarceration. The district court found that Cerda had been "an awful

probationer” and had failed to “behave as [she was] required to behave again and again and again.” The district court characterized her efforts in Teen Challenge as “going through the motions” while disobeying the rules. Acknowledging Cerda’s medical troubles, the district court explained, “I really think that’s something . . . separate and apart from your behaviors while on probation, which . . . have been . . . a thumbing [of] your nose at probationary requirements.” The district court also explained, “If probation is to mean anything, if those rules and requirements are to mean anything, finally at some point we say it’s done.”

Accordingly, the district court revoked Cerda’s probation and executed concurrent sentences as follows: 52 months for second-degree possession of a controlled substance, 102 months for first-degree possession of a controlled substance, and 15 months for sale of a simulated controlled substance. This appeal follows.

D E C I S I O N

Cerda argues that the district court abused its discretion by revoking her probation. Alternatively, she contends that the district court erred by failing to impose a shorter sentence in accordance with the Minnesota Drug Sentencing Reform Act (DSRA), 2016 Minn. Laws ch. 160.

I. The district court did not abuse its discretion by revoking Cerda’s probation.

Cerda challenges her probation revocation, arguing that the need for confinement did not outweigh policy considerations favoring her continued probation. “The [district] court has broad discretion in determining if there is sufficient evidence to revoke

probation,” and we reverse “only if there is a clear abuse of that discretion.” *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980).

Before a district court can revoke probation, it must (1) “designate the specific condition or conditions that were violated,” (2) “find that the violation was intentional or inexcusable,” and (3) “find that [the] need for confinement outweighs the policies favoring probation.” *Id.* at 250. Cerda contests the existence of the third factor.

Regarding the third factor, the supreme court has said, “In some cases, policy considerations may require that probation not be revoked even though the facts may allow it The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Id.* Revocation and imprisonment is appropriate only if the district court finds that “(i) confinement is necessary to protect the public from further criminal activity by the offender; or (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* at 251 (quotation omitted).

The district court found that continuing probation would unduly depreciate the seriousness of Cerda’s violation and, therefore, the need for confinement outweighed the policies favoring probation.¹ Cerda contends that the district court improperly focused on

¹ Cerda additionally argues that the record does not support findings on the two other subfactors that potentially support confinement. Because we conclude that the district court did not abuse its discretion, we need not address these alternative bases favoring confinement.

Cerda's entire probationary period rather than the seriousness of the single violation that prompted the contested hearing: her failure to complete programming. But the district court was not bound to consider Cerda's last probation violation in isolation. The supreme court has consistently repeated that "[r]evocation followed by imprisonment should not be the disposition . . . unless the court finds on the basis of the *original offense and the intervening conduct of the offender* that" failing to revoke probation would depreciate the seriousness of the probation violation. *State v. Osborne*, 732 N.W.2d 249, 253 (Minn. 2007) (quoting *Austin*, 295 N.W.2d at 251).

The context of Cerda's long history on probation supports the district court's decision. Before her discharge from Teen Challenge, Cerda had repeatedly violated probationary terms, and the district court had repeatedly admonished Cerda. It specifically found her to be an "awful probationer" and that her programming violation indicated that she was simply "going through the motions" rather than attempting compliance. And as the supreme court has explained, "[I]t [is] not unreasonable to conclude that treatment ha[s] failed" when a defendant has been offered treatment but has failed to take advantage of the opportunity or to show a commitment to rehabilitation" *Austin*, 295 N.W.2d at 251.

We acknowledge Cerda's arguments that this was her first attempt at treatment, she accepted responsibility by admitting the violation, and she attempted to pursue further treatment. But the district court was aware of these potentially mitigating circumstances and instead focused on Cerda's failure to fully engage in and complete treatment after a long series of prior probation violations. We therefore conclude that the district court did

not abuse its discretion by determining that continuing probation again would depreciate the seriousness of Cerda's violation.

II. The district court erred by failing to sentence Cerda under the DSRA-amended Minnesota Sentencing Guidelines.

Cerda argues alternatively that she must be resentenced on her drug-possession convictions because the district court failed to impose an ameliorated sentence under the DSRA-amended Minnesota Sentencing Guidelines. The state agrees. We review the interpretation of statutes and the sentencing guidelines de novo. *State v. Campbell*, 814 N.W.2d 1, 4 (Minn. 2012).

When the legislature amends a law after the date of an offense but before a final judgment has been reached, the amelioration doctrine requires the courts to apply the amended law if certain requirements are met. *State v. Kirby*, 899 N.W.2d 485, 488-89 (Minn. 2017). In *Kirby*, the Minnesota Supreme Court specifically held that “[t]he amelioration doctrine requires the resentencing of a person whose conviction was not yet final on the effective date of [the DSRA].” *Id.* at 485 (syllabus by the court). The DSRA was effective on May 23, 2016. *See* 2016 Minn. Laws. ch. 160, § 18(b). Here, the district court determined the presumptive sentences for Cerda's offenses based on the 2015 guidelines that were in effect when she committed the offenses. But by the time the district court entered Cerda's convictions in July 2016, the DSRA required different presumptive sentences for those convictions. *See* 2016 Minn. Laws. ch. 160, § 18(b); Minn. Sent. Guidelines 4.C (2016). Because the DSRA took effect before Cerda's convictions were final, the district court erred by overlooking the DSRA-amended sentencing guidelines.

We reverse and remand for the district court to resentence Cerda in accordance with the 2016 guidelines.²

Affirmed in part, reversed in part, and remanded; motion denied.

² We deny Cerda's motion to strike the state's references to records in her false-report case and the circumstances of her codefendant's prosecution and appeal. *See State v. Heggs*, No. A19-1523, 2020 WL 3172828, at *1-5 (Minn. App. June 15, 2020). The fact that Cerda was convicted for falsely reporting a crime by law enforcement is part of the record in this appeal, and we decide this case without relying on any of the other challenged materials.