

DA 18-0323

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 22N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

LESLIE AARON MABREY,

Defendant and Appellant.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause Nos. ADC 2017-63
and DDC 2014-187
Honorable Mike Menahan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Koan Mercer, Assistant Appellate
Defender, Helena, Montana

For Appellee:

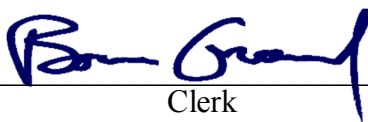
Timothy C. Fox, Montana Attorney General, Roy Brown, Assistant
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Submitted on Briefs: September 4, 2019

Decided: January 28, 2020

Filed:


Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion, shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 This is a consolidated appeal in which Defendant Leslie Aaron Mabrey (Mabrey) appeals the Orders of the First Judicial District Court, Lewis and Clark County, revoking Mabrey's previously-suspended sentences and entering amended judgments based on its finding Mabrey failed to comply with sentencing conditions. We affirm.

¶3 On June 25, 2015, Mabrey pled guilty to the charge of Threats and Other Improper Influence in Official and Political Matters, a felony, in violation of § 45-7-102(1)(a) and (2)(i), MCA, and was sentenced to five years in the Montana State Prison (MSP) with all time suspended and credit for time served. The District Court's sentence put Mabrey on notice that he was placed under the supervision of, and subject to, all regulations and rules of the Montana Department of Corrections' (DOC) Adult Probation and Parole Bureau (P&P). As a condition of his suspended sentence, the District Court ordered Mabrey to "comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself as a good citizen."

¶4 On March 7, 2016, the State petitioned the District Court to revoke Mabrey's suspended sentence. In July, the District Court held a revocation hearing and determined Mabrey violated the previously-imposed sentence. On November 9, 2016, Mabrey was

sentenced to five years at MSP with all time suspended, subject to all previously-imposed conditions, and given credit for time served.

¶5 On February 9, 2017, the State again petitioned to revoke Mabrey's November 9, 2016 suspended sentence. Around that same time, the State charged Mabrey with Failure to Register as a Violent Offender, a felony, in violation of § 46-23-504, MCA. On September 1, 2017, Mabrey pled guilty to that charge.

¶6 On February 20, 2018, the District Court held a revocation hearing on Mabrey's threats charge and a sentencing hearing on Mabrey's failure to register charge. The District Court revoked Mabrey's suspended sentence on his threats charge and imposed a sentence of five years to the DOC, with all time suspended and subject to all previously imposed conditions. The District Court imposed the same sentence on Mabrey for the failure to register charge, to run concurrently with the sentence imposed for the threats charge. Mabrey was again put on notice he was placed under the supervision of, and subject to, all regulations and rules of the DOC and P&P. Mabrey was released on his own recognizance to serve both suspended sentences.

¶7 On March 5, 2018, the State petitioned to revoke Mabrey's suspended sentences in both cases. The District Court held a combined revocation hearing on March 29, 2018. At the hearing, the District Court heard testimony from P&P Officer Justin Ewing; P&P Deputy Chief Katie Donath; Michael Dahle, a licensed clinical social worker of DOC's Sanction, Treatment, Assessment, Revocation & Transition Center (START); and Catherine Orrino, a Forensic Social Worker at Montana State Hospital (MSH).

¶8 Officer Ewing testified at the revocation hearing that on February 27, 2018, Mabrey arrived barefoot at P&P's Helena office in freezing temperatures, shaking and incoherent, stating someone had attempted to inject him with a lethal dose of methamphetamine known as a "hot shot," and admitted to consuming alcohol. Mabrey provided a urine sample which later tested positive for methamphetamine.

¶9 That same day, Officer Ewing took Mabrey to St. Peter's Hospital in Helena to have his feet examined for frostbite and requested Mabrey's mental health also be evaluated by the Crisis Response Team (CRT). The CRT did not assess Mabrey, and he was subsequently discharged from the hospital. Officer Ewing continued his attempts to have Mabrey's mental health evaluated but was unsuccessful. Officer Ewing consulted with Deputy Chief Donath, who advised an informal intervention hearing should occur.

¶10 Later that day, the informal intervention hearing was held at the P&P Office in Helena. Mabrey, Officer Ewing, Deputy Chief Donath, and P&P Officer Landon Lamb were all present. Mabrey agreed to be sanctioned to a thirty-day jail placement to be served at START, with the requirement that Mabrey obtain a chemical dependency and mental health evaluation and follow all recommendations.

¶11 On March 2, 2018, Mabrey was discharged from START for failing to cooperate with treatment and the recommendations of his START mental health provider, Mr. Dahle. Mr. Dahle testified at the March revocation hearing that while Mabrey was cooperative with the START program in the sense he was "not combative," Mabrey had "essentially refused" the mental health treatment offered to him and "strongly believed that he was not mentally ill and did not need any treatment on any level."

¶12 After Mabrey’s discharge from START, Chief Deputy Donath testified that she attempted to have Mabrey placed at MSH in Warm Springs but was unsuccessful. Ms. Orrino testified MSH denied Mabrey placement based on his history of nonparticipation in and unresponsiveness to treatment. Chief Deputy Donath then directed Officer Ewing to file a report of violation asserting Mabrey failed to comply with the District Court’s condition he obey all laws and ordinances, which prompted the State to seek revocation of Mabrey’s suspended sentences.

¶13 At the conclusion of the revocation hearing, the District Court found Mabrey had violated both of his suspended sentences based on his refusal to accept treatment required by P&P’s sanction, and that P&P had exhausted its sanction alternatives. The District Court also noted that “the law enforcement community” has “been involved at each and every stage of this proceeding” in an effort to help Mabrey. The District Court further concluded Mabrey required “more structure” in treating his co-occurring mental health and chemical dependency problems, and that a DOC commitment would accomplish this. The District Court ultimately revoked both of Mabrey’s suspended sentences and imposed concurrent five-year sentences to the DOC, no time suspended, with credit for time served. The District Court recommended in both cases that Mabrey be placed in a community-based program, facility, or State corrections institution, and that he be screened for placement with appropriate mental health and chemical dependency treatment.

¶14 We review a district court’s revocation of a suspended sentence for an abuse of discretion. *State v. Johnson*, 2018 MT 277, ¶ 10, 393 Mont. 320, 430 P.3d 494 (citations omitted). An abuse of discretion occurs when the court “acts arbitrarily without

employment of conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice.” *State v. Rovin*, 2009 MT 16, ¶ 23, 349 Mont. 57, 201 P.3d 780 (citing *State v. Burke*, 2005 MT 250, ¶ 11, 329 Mont. 1, 122 P.3d 427).

¶15 A district court’s revocation decision “involve[s] both legal and factual findings.” *Johnson*, ¶ 10. Legal questions are reviewed de novo. *Johnson*, ¶ 10 (citations omitted). Factual questions are reviewed for clear error. *Johnson*, ¶ 10 (citations omitted). “A district court’s factual findings are clearly erroneous if they are not supported by substantial credible evidence, if the court misapprehended the effect of the evidence, or if a review of the record leaves this Court with the definite and firm conviction that a mistake has been made.” *Johnson*, ¶ 10 (citing *State v. Reynolds*, 2017 MT 317, ¶ 16, 390 Mont. 58, 408 P.3d 503).

¶16 On appeal, Mabrey argues (1) the District Court erred in finding the State proved Mabrey violated a condition of his suspended sentence, and (2) the District Court lacked authority to revoke Mabrey’s suspended sentence for a compliance violation under § 46-18-203, MCA. We disagree.

¶17 In general, “[t]he standard for revocation of probation is whether the trial judge is reasonably satisfied that the conduct of the probationer has not been what he agreed it would be if he were given liberty.” *State v. Graves*, 2015 MT 262, ¶ 12, 381 Mont. 37, 355 P.3d 769. Revocation proceedings are governed by § 46-18-203, MCA, which requires the State to prove at a hearing “by a preponderance of the evidence, that there has been a violation of . . . the terms and conditions of the suspended . . . sentence” Section 46-18-203(6)(a)(i), MCA. “A preponderance of the evidence is ‘such evidence as, when

weighed with that opposed to it, has more convincing force and the greater probability of truth.’” *State v. Sebastian*, 2013 MT 347, ¶ 16, 372 Mont. 522, 313 P.3d 198 (quoting *State v. Stuit*, 176 Mont. 84, 89, 576 P.2d 264, 267 (1978)). While due process requires a revocation proceeding be fundamentally fair, the Montana Rules of Evidence do not apply to such hearings. *Sebastian*, ¶ 19 (citing *State v. Triplett*, 2008 MT 360, ¶ 16, 346 Mont. 383, 195 P.3d 819; *State v. Pedersen*, 2003 MT 315, ¶ 20, 318 Mont. 262, 80 P.3d 79) (“A probationer’s right to due process in a revocation proceeding is different from the right to due process in a criminal proceeding . . . [t]he revocation hearing is not a criminal trial but a summary hearing to establish a violation of the conditions of the prisoner’s probation. The probationer already stands convicted of a crime no matter what the grounds for the revocation may be[.]”) (alteration in original).

¶18 For a compliance violation, the district court may revoke an offender’s suspended sentence upon first finding “the offender has violated the terms and conditions of the suspended . . . sentence.” Section 46-18-203(8)(c), MCA. The district court must next find that the violation is a compliance violation as defined by § 46-18-203(11)(b), MCA. Section 46-18-203(8)(c), MCA. Finally, the district court must find that “the offender’s conduct indicates that the offender will not be responsive to further efforts under the incentives and interventions grid.” Section 46-18-203(8)(c), MCA. Upon making these findings, the district court is authorized to sentence the offender as provided in § 46-18-203(7), MCA. *See* § 46-18-203(8)(c), MCA. Section 46-18-203(7), MCA, allows the district court to revoke the suspended sentence and “require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include

a longer imprisonment or commitment term than the original sentence.” Section 46-18-203(7)(a)(iii), MCA.

¶19 The District Court found that Mabrey was in violation of his suspended sentence based on Mr. Dahle’s “repeated statements that [] Mabrey refused to acknowledge he had a mental illness, and refused to accept any effort to provide mental health treatment for him.” The District Court found the violation to be a “compliance violation” and determined that the DOC had “exhausted its alternatives under the statute.” The State only had to establish this single violation by a preponderance of the evidence for the District Court to revoke Mabrey’s previously-imposed suspended sentences under § 46-18-203(8)(c), MCA. *See Sebastian*, ¶ 24 (quoting *State v. Gillingham*, 2008 MT 38, ¶ 28, 341 Mont. 325, 176 P.3d 1075) (“A single violation of the conditions of a suspended sentence is sufficient to support a district court’s revocation of that sentence.”).

¶20 From the evidence presented at the revocation hearing, the District Court correctly determined Mabrey’s violation fits the broad legal definition of a compliance violation under § 46-18-203(11)(b), MCA. From there, the District Court correctly found from the evidence presented that P&P had exhausted its sanction alternatives. Further, the District Court did not err when it determined from the evidence that Mabrey’s conduct necessitated a more structured placement with the DOC, thereby essentially finding that Mabrey would be unresponsive to further intervention or sanctions by P&P. To the extent the District Court did not specifically and explicitly find that Mabrey would be unresponsive to these efforts, the finding was certainly implied from the District Court’s statements. *See State v. Gable*, 2015 MT 200, ¶ 18, 380 Mont. 101, 354 P.3d 566 (citing

Hughes v. Hughes, 2013 MT 176, ¶ 30, 370 Mont. 499, 305 P.3d 772; *Interstate Brands Corp. v. Cannon*, 218 Mont. 380, 384, 708 P.2d 573, 576 (1985)) (“This Court has adopted the doctrine of implied findings for purposes of reviewing findings of fact. . . . That doctrine provides that where ‘findings are general in terms, any findings not specifically made, but necessary to the [determination], are deemed to have been implied, if supported by the evidence.’”) (alteration in original). The District Court thus could invoke the sentencing options under either § 46-18-203(7) or (8), MCA, including revocation. The District Court did not abuse its discretion when it revoked Mabrey’s sentence.

¶21 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court’s ruling was not an abuse of discretion.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ JIM RICE