

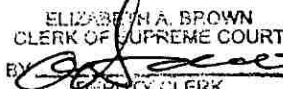
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEANNETTE IRENE CHAMBERLAIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83846-COA

FILED

AUG 10 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jeannette Irene Chamberlain appeals from an order of the district court revoking probation. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Chamberlain argues that the district court abused its discretion by terminating her from a diversionary program and revoking her probation. Chamberlain contends she only committed technical violations of the conditions of her probation and was therefore entitled to graduated sanctions pursuant to NRS 176A.510 instead of revocation.¹

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 supporting a decision to revoke probation must merely be sufficient to

¹Chamberlain contends that she argued before the district court that she only committed technical violations of her probation but that her argument is not reflected in the transcript of the relevant hearing due to a transcription error. Chamberlain therefore asserts that she preserved this claim for appeal and it should not be reviewed under a plain-error standard. The State concedes that Chamberlain raised this issue before the district court. Accordingly, we conclude that this issue was preserved for appeal.

reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation. *Id.*

“Parole and probation revocations are not criminal prosecutions.” *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980). Rather, “[r]evocation 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.” *United States v. Brown*, 59 F.3d 102, 104 (9th Cir. 1995). That is, probation revocation proceedings are part of the penalty for the underlying crime. *See Johnson v. United States*, 529 U.S. 694, 701 (2000) (“[P]ostrevocation penalties relate to the original offense.”). And “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.” *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008).

The Legislature created NRS 176A.510 in 2019 to provide guidance to probation officers when a probationer commits “technical” violations of probation. At the same time, it amended NRS 176A.630 to provide for the district court’s use of graduated sanctions pursuant to NRS 176A.510 when a probationer commits technical violations of the conditions of his or her probation. These statutory amendments had an effective date of July 1, 2020. *See* 2019 Nev. Stat., ch. 633, § 18, at 4387-88; § 35, at 4401-03; 2019 Nev. Stat., ch. 633, § 137, at 4488. Chamberlain committed her offense in 2018, which was prior to the effective date of the 2019 statutory amendments. Because the proper penalty for Chamberlain’s offense was the penalty in effect when she committed her crime, Chamberlain was only eligible for application of these statutory amendments if the Legislature intended them to apply retroactively.

The question of whether the statutory amendments are to be applied retroactively is an issue of statutory interpretation, which we

review de novo. *See Williams v. State Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017). “[U]nless the Legislature clearly expresses its intent to apply a law retroactively, . . . the proper penalty is the penalty in effect at the time of the commission of the offense.” *Pullin*, 124 Nev. at 567, 188 P.3d at 1081. The Legislature gave no indication in the text of either NRS 176A.510 or NRS 176A.630 that it intended to apply the amended statute retroactively. Accordingly, Chamberlain was not entitled to retroactive application of the statutory amendments. And thus, the district court did not err by rejecting Chamberlain’s request for graduated sanctions.

Moreover, at the revocation hearing the State presented testimony and evidence demonstrating that Chamberlain violated the terms of her probation by failing to install an ignition interlock device on her vehicle, she provided false information to law enforcement, and she consumed alcohol. The district court found that Chamberlain’s conduct was not as good as required by the conditions of her probation. Therefore, the district court revoked Chamberlain’s probation and imposed a sentence of 12 to 32 months in prison. Based on the record before this court, we conclude Chamberlain did not demonstrate the district court abused its discretion by revoking her probation. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Pershing County Public Defender
Attorney General/Carson City
Pershing County District Attorney
Clerk of the Court/Court Administrator