IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEREMY PAUL BROWN-WHEATON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83895-COA

JEREMY PAUL BROWN-WHEATON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83896-COA

FILED

AUG 16 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING AMENDED JUDGMENTS OF CONVICTION AND REMANDING

Jeremy Paul Brown-Wheaton appeals from an amended judgment of conviction revoking probation filed in district court case no. C-20-352037-1 (Docket No. 83895) and an order for revocation of probation and amended judgment of conviction filed in district court case no. C-20-252265-1 (Docket No. 83896). Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Brown-Wheaton argues that the district court abused its discretion by revoking his probation solely because he was arrested for a new offense. Brown-Wheaton asserts that the district court erred by concluding his arrest constituted a nontechnical violation of his probation pursuant to NRS 176A.630(5)(b).

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). The decision must be based on "evidence and facts [that] reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation." *Id.* However, "[d]ue 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) (internal quotation marks and brackets omitted). Moreover, a revocation hearing "is to determine not only whether the alleged violations actually occurred, but whether the facts as determined warrant revocation." *Id.* at 122, 606 P.2d at 158 (internal quotation marks omitted).

NRS 176A.630(1) allows the district court to revoke probation upon a first violation and without graduated sanctions if it finds the probationer violated probation by "committing" certain offenses, including "battery which constitutes domestic violence." The meaning of "committing" as it is utilized in NRS 176A.630(1) is an issue of statutory interpretation. "Statutory interpretation is a question of law subject to de novo review." *Williams v. State Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017). "The goal of statutory interpretation is to give effect to the Legislature's intent." *Id.* (internal quotation marks omitted). "To ascertain the Legislature's intent, we look to the statute's plain language." *Id.*

Based on the plain language of NRS 176A.630(1), the Legislature intended committing to mean that the probationer performed or perpetrated one of the offenses listed within that statute. *See Commission*, Black's Law Dictionary (11th ed. 2019) (defining commission, in pertinent part, as "[t]he act of doing or perpetrating (as a crime)").

Accordingly, pursuant to NRS 176A.630(1), for the district court to correctly revoke probation upon a first violation without the use of graduated sanctions, the district court must find, based on verified facts presented at a probation revocation hearing, that a probationer performed or perpetrated one of the relevant offenses.

At a probation revocation hearing, "if an arrest report were introduced, we see no difficulty in considering it as *prima facie* evidence of the facts it contains." *Anaya*, 96 Nev. at 123, 606 P.2d at 158-59. "When the accuracy of the facts alleged is challenged by the probationer, however, the presumptive reliability of the report when used to establish facts constituting a probation violation becomes more questionable." *Id.* at 123-24, 606 P.2d at 159. Thus, a report containing information concerning a probationer's arrest may be considered by a district court as prima facie evidence of the facts it contains, but such a report is not presumptively reliable if the probationer challenges the accuracy of the facts contained therein.

The only evidence of a non-technical violation that was discussed at the probation revocation hearing was a probation violation report, and that report stated that Brown-Wheaton forced his girlfriend to lay with him and kicked her off of the bed.[1] Brown-Wheaton stipulated that he had been arrested for battery constituting domestic violence but insisted that "[h]e has not committed a new domestic violence charge." He expressly did not stipulate to the facts underlying his arrest. Further, Brown-Wheaton acknowledged that his arrest violated the conditions of his

[1]We note nothing in the record before this court suggests that the district court was provided with a copy of the arrest report nor that the probation violation report was admitted into evidence.

probation, although he asserted that his arrest only constituted a technical violation. The district court ultimately concluded that an arrest was sufficient to find that Brown-Wheaton committed battery constituting domestic violence and he therefore committed a nontechnical violation of his probation. *See* NRS 176A.630(5)(b). The district court accordingly found that Brown-Wheaton's conduct was not as good as required by the conditions of his probation and revoked his probation.

As stated previously, Brown-Wheaton argued that he did not commit a new domestic violence offense, and he did not stipulate to the alleged facts that led to his arrest. Nevertheless, the State did not present any additional testimony or facts concerning Brown-Wheaton's conduct and simply argued the allegations in the probation violation report. Because of these circumstances, and the district court's lack of findings that Brown-Wheaton committed the offense of battery constituting domestic violence, the conclusion that an arrest, standing alone, justifies a revocation of probation, is insufficient considering the language in NRS 176A.630(1).

Accordingly, we conclude that the district court's decision did not meet minimum due process concerns. *See Anaya*, 96 Nev. at 122, 606 P.2d at 157. Therefore, we vacate the amended judgments of the district court and remand these matters for new probation revocation hearings at which the district court may take additional evidence regarding Brown-Wheaton's alleged probation violations. Thereafter, if the district court finds, based on verified facts, that Brown-Wheaton performed or perpetrated battery constituting domestic violence and further determines that revocation is appropriate, it may reinstate the amended judgments of conviction. For these reasons, we

ORDER the amended judgments of conviction VACATED AND REMAND these matters to the district court for proceedings consistent with this order.[2]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

---

[2]In light of our disposition, we need not address Brown-Wheaton's claim that he was denied the opportunity to challenge the factual basis of his arrest that led to the probation revocation.