DA 19-0027

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 4

CITY OF MISSOULA,

Plaintiff and Appellee,

v.

JODY LYNN POPE,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DC-18-34
Honorable Robert L. Deschamps, III, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Michael Marchesini, Assistant Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Roy Brown, Assistant Attorney General, Helena, Montana

Jim Nugent, Missoula City Attorney, Douglas Schaller, Deputy City Attorney, Missoula, Montana

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Submitted on Briefs: November 4, 2020

Decided: January 5, 2021

Filed:

Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Jody Lynn Pope appeals an order of the Fourth Judicial District Court affirming the City of Missoula Municipal Court's denial of her motion to dismiss a petition to revoke sentence. Pope argues that pursuant to § 46-18-203, MCA (2017), a court lacks the authority to revoke a misdemeanor suspended sentence for "compliance violations" unless the petition shows that alternatives to revocation have been exhausted. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On July 6, 2015, the Municipal Court gave Pope a twelve-month deferred imposition of sentence for Partner or Family Member Assault and placed her on misdemeanor probation. The City of Missoula petitioned to revoke in January 2016; the court revoked Pope's sentence and imposed a new twelve-month suspended sentence in April 2016. The City filed a second petition to revoke in July 2016; the court again found Pope to have violated the alleged conditions. It imposed a second twelve-month suspended sentence in November 2016.

¶3 On September 19, 2017, the City filed a third petition to revoke, alleging that Pope used intoxicants and failed to complete community service in violation of the suspended sentence's conditions. Under § 46-18-203, MCA, as amended in 2017, these are considered "compliance violations." Pope moved to dismiss the petition, arguing that the amendment to § 46-18-203, MCA, removed the court's authority to revoke suspended sentences for compliance violations without first showing the probation office had exhausted all statutory alternatives. The Municipal Court denied the motion, holding that

the probation office has authority to seek revocation outside of any statutory guidelines, and the 2017 changes to § 46-18-203, MCA, do not apply to misdemeanors. Pope then admitted to using intoxicants, and the court revoked and reimposed her twelve-month suspended sentence.

¶4 Pope appealed to the District Court. It affirmed, concluding that § 46-18-203, MCA, when read in conjunction with other statutes regarding misdemeanors and courts of limited jurisdiction, was "ambiguous on its face." To resolve this ambiguity, the District Court looked to other statutes dealing with revocation, as well as the legislative history of the 2017 amendment to § 46-18-203, MCA. It determined that the Legislature never meant the 2017 changes to apply to misdemeanor revocations. The District Court concluded the only way to "harmonize" § 46-18-203, MCA, with the other revocation statutes was to limit application of the 2017 amendments to felonies.

STANDARD OF REVIEW

¶5 When reviewing a municipal court's decision, a district court acts as an intermediate appellate court. *City of Helena v. Broadwater*, 2014 MT 185, ¶ 8, 375 Mont. 450, 329 P.3d 589. This Court reviews an appeal of a district court's decision on appeal from a municipal court as if the appeal originally had been filed in this Court. *Broadwater*, ¶ 8. The interpretation of a statute is a question of law this Court reviews for correctness. *State v. Oropeza*, 2020 MT 16, ¶ 14, 398 Mont. 379, 456 P.3d 1023.

DISCUSSION

¶6 Facing prison overcrowding, high recidivism rates, and increasing costs, the 2015 Montana Legislature established the Commission on Sentencing ("Commission") to study the State's criminal justice system and provide policy options to address its shortcomings. *Oropeza*, ¶ 3. In 2017, based on the Commission's findings, the Legislature passed a series of criminal justice reform bills. *Oropeza*, ¶ 4. One of the new bills, Senate Bill ("S.B.") 59, required the Montana Department of Corrections ("DOC") to adopt a system known as the Montana Incentives and Interventions Grid for Adult Probation and Parole ("MIIG"). 2017 Mont. Laws ch. 390, § 5. The MIIG serves as a guide to community supervision of offenders on parole or with deferred or suspended sentences. *Oropeza*, ¶ 4.

¶7 Another bill, S.B. 63, modified the process by which a defendant's probation or suspended sentence is revoked. *Oropeza*, ¶ 4; 2017 Mont. Laws ch. 391, § 1. In combination with the MIIG, the bill split probation and parole violations into two categories—compliance violations and non-compliance violations. *Oropeza*, ¶ 6. A new criminal offense, possession of a firearm, harassing a victim or someone close to a victim, absconding, and failure to complete sex offender treatment are non-compliance violations. Section 46-18-203(11)(b)(i)-(v), MCA. A violation of any other condition is a compliance violation. *Oropeza*, ¶ 6. Compliance violations do not bring immediate revocation of a deferred or suspended sentence but subject the offender "to the appropriate intervention or incentive response" under the MIIG. *Oropeza*, ¶ 6; § 46-18-203(8)(a), MCA. Only if the MIIG procedures have been exhausted and their violations documented or if the court finds

that the offender's conduct indicates she will not be receptive to further efforts under the MIIG may the court revoke a suspended sentence. Section 46-18-203(8)(b)-(c), MCA.

¶8 Before 2017, the statute permitted a court to revoke a suspended sentence upon a simple finding that the offender violated one or more term or condition of her suspended sentence. Section 46-18-203(7)(a), MCA (2015). In its pre-amendment version, § 46-18-203, MCA, did not differentiate between misdemeanors and felonies; a misdemeanant's or felon's suspended or deferred sentence could be revoked for any violation. *See* § 46-18-203, MCA (2015). Pope argues that nothing in the 2017 amendment changed § 46-18-203, MCA's, applicability and therefore the Municipal Court and District Court both erred in concluding the statute does not apply to misdemeanor suspended sentences. The City counters that the plain language of the legislative changes implemented in 2017 demonstrates § 46-18-203, MCA, is meant to apply only to felonies, and the District and Municipal Courts were correct in applying the 2015 version of the statute to Pope's violation.

¶9 When interpreting a statute, "the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Section 1-2-101, MCA. This Court construes a statute "'without isolating specific terms from the context in which they are used by the Legislature.'" *State v. Triplett*, 2008 MT 360, ¶ 25, 346 Mont. 383, 195 P.3d 819 (quoting *Mont. Sports Shooting Ass'n. v. State, Mont. Dept. of Fish, Wildlife and Parks*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003). "Statutory construction is a holistic

endeavor and must account for the statute's text, language, structure, and object." *State v. Heath*, 2004 MT 126, ¶ 24, 321 Mont. 280, 90 P.3d 426 (citation, internal quotations omitted). The overarching goal of this endeavor is ascertaining and giving effect to legislative intent.

¶10 We first examine the plain language of the statute. When that language is ambiguous or subject to more than one reasonable interpretation, our interpretation is aided by legislative history. *State v. Legg*, 2004 MT 26, ¶ 27, 319 Mont. 362, 84 P.3d 648. We thus read and construe each statute as a whole, both to give effect to the purpose of the statute and to avoid an absurd result. *Triplett*, ¶ 25 (citing *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶ 46, 302 Mont. 209, 14 P.3d 487).

¶11 Pope correctly observes that § 46-18-203, MCA, is the sole source of statutory authority allowing a court to revoke a suspended sentence. She argues that the Municipal Court erred in concluding that it had authority to revoke the sentence under §§ 46-18-1005 and -1011, MCA, which pertain only to the supervision of offenders on misdemeanor probation. Pope acknowledges that the 2017 statutes do not expressly require use of the MIIG for misdemeanants. She argues, however, that if misdemeanor probation officers never use the MIIG, then § 46-18-203(8)(c), MCA, simply does not permit revocation in misdemeanor cases for minor compliance violations. The City argues that the 2017 statutory changes to § 46-18-203, MCA, are ambiguous and, when read as a whole and in conjunction with other provisions of S.B. 59 and 63 and the relevant legislative history, it is clear the Legislature did not intend the MIIG guidelines or the new revocation

process to apply to misdemeanor sentences. The City concludes that the court did not violate the law when it revoked Pope's suspended sentence.

¶12 The City first points to other statutes amended by S.B. 59 and 63. These include § 46-23-1028, MCA, which requires the DOC to adopt and maintain the MIIG. The statute also provides that the MIIG's purpose is to "guide responses to negative and positive behavior by people under supervision by the [DOC]." Section 46-23-1028(1), MCA. Section 46-23-1015(3), MCA, allows a hearing officer—in consultation with the MIIG—to direct a probation and parole officer to order thirty days of detention or up to ninety days of placement in a community corrections facility, such as a transitional living or sobriety program. The City points out that none of the statutes amended in either S.B. 59 or 63 mention or alter any procedure for dealing with misdemeanor supervision. Instead, the law houses administration and implementation of the MIIG with the DOC, which is responsible for felony supervision only. Local and municipal governments handle misdemeanor supervision. Sections 46-23-1001, -1005, MCA.

¶13 The City argues that the DOC's supervision and intervention authority under § 46-23-1028(1), MCA, is "inextricably intertwined" with the courts' authority to revoke a suspended sentence under § 46-18-203, MCA. Section 46-18-203(8), MCA, requires use of the MIIG—exclusively controlled by the DOC in administering felony supervision. The City argues that because the MIIG framework is absent in municipal courts, § 46-18-203, MCA's, sections on revocation are rendered meaningless when applied to misdemeanors; municipal courts lack the structure or even authority to implement the

MIIG and many of its guidelines. As the Legislature "surely did not intend the statutory changes to be unusable for misdemeanor revocation," the City concludes that § 46-18-203, MCA, is open to more than one interpretation, and the legislative history of S.B. 63 must be examined to determine the Legislature's intent.

¶14 Pope counters that, by its plain language, § 46-18-203, MCA, applies to "any offender" subject to revocation. Citing *State v. Jardee*, 2020 MT 81, ¶ 10, 399 Mont. 459, 461 P.3d 108, Pope argues that precedent requires us to "apply the plain meaning of a statute when such meaning is unambiguous." Pope argues further that because, prior to its 2017 amendment, the statute controlled revocation for both misdemeanors and felonies, we should presume that the Legislature "intended to make some change" to the misdemeanor revocation authority as well. Finally, Pope argues that the City's interpretation of the statute creates a rigid structure governing revocation of a felon's suspended sentence but allows revocation of a misdemeanant's suspended sentence upon a single minor violation. Pope characterizes this as an "absurd result" the Legislature surely did not intend.

¶15 Pope's argument that § 46-18-203, MCA, is meant to apply to all revocation proceedings has facial appeal. First, there is no other statute that authorizes revocation of deferred or suspended misdemeanor sentences. Second, subsection (12), unaltered from the previous versions of the statute, makes the statute applicable "*to any offender* whose suspended or deferred sentence is subject to revocation." *See* § 46-18-203(12), MCA; § 46-18-203(9), MCA (2015) (emphasis added). When viewed in isolation, § 46-18-203, MCA,

seemingly requires the MIIG to be applied to all revocations, misdemeanors included. But the City is correct that when read in the context of related provisions, the MIIG is used only in the DOC's supervision of felons. *See Triplett*, ¶ 25; § 46-23-1001(5), MCA (defining "misdemeanor probation officer" as a person employed by a county or municipality to provide misdemeanor probation supervision services); § 46-23-1001(8), MCA (defining "probation and parole officer[s]" as persons employed by the DOC); § 46-23-1028, MCA (requiring the DOC to revise, maintain, and implement the MIIG and use it to guide responses to offenders under DOC supervision); § 46-23-1015(1), MCA (requiring probation and parole officers to consult the MIIG); § 46-23-1015(5)(a)-(e), MCA (allowing a probation and parole officer to recommend changes to the conditions of an offender's suspended sentence, and for a hearing to be held pursuant to § 46-18-203, MCA)). The related statutes make it clear that the DOC and its agents, probation and parole officers, maintain and apply the MIIG guidelines.

¶16 Misdemeanor probation officers, on the other hand, are not referenced in connection to use of the MIIG. What's more, the Legislature did not amend § 46-23-1005, MCA, governing the authority of misdemeanor probation officers. That statute requires local officers to follow the supervision guidelines required in § 46-23-1011, MCA—which apply equally to felony offenders—but does not refer to or incorporate the intervention hearing called for in § 46-23-1015, MCA, or the supervision responses grid (MIIG) and its accompanying training requirements specified by § 46-23-1028, MCA. When viewed holistically, it is therefore apparent that § 46-18-203, MCA's, references to the MIIG and

compliance and non-compliance violations refer to those under DOC supervision—felons. Because the statute potentially is subject to two reasonable interpretations, we consult the legislative history. *See Legg*, ¶ 27.

¶17 A review of hearing testimony on S.B. 63 clearly indicates the drafters' intent to change the way felony revocation functions. The bill's sponsor, Senator Cynthia Wolken, testified to both Montana Senate and House committees that the bill's intent was to stop situations in which a felon's suspended sentence or probation is revoked for minor non-compliance issues.[1] Several other individuals and organizations involved in drafting S.B. 59 and 63 also testified, referencing how the bills affect the DOC and its probation and parole officers. The overarching goal of the legislation, according to testimony presented to the Legislature, was to provide a method of intervention that allows minor compliance violations to be addressed in a constructive manner, through the MIIG. This in turn would keep offenders from being sent back to prison, often repeatedly and for lengthy and costly amounts of time, for missing a single check-in, forgetting to alert their probation officer to a change in residence, or other minor violations. The testimony presented makes plain that the amendments to § 46-18-203, MCA, particularly the development of the MIIG and differentiation of compliance from non-compliance violations, are meant to apply to felons under DOC supervision, not misdemeanants under local authority.

[1] In its order, the District Court relied on ex parte communications with former Senator Wolken to ascertain legislative intent. In ascertaining legislative intent, however, this Court relies upon the official records of the Legislature.

¶18 We do not agree with Pope that construing the 2017 amendments to § 46-18-203, MCA, as applying to only felony revocation produces an "absurd result." Pope points out that, applying this construction, "[a] petty offender on misdemeanor probation who commits a minor violation could have her suspended sentence swiftly revoked, while a serious offender on felony probation who commits the exact same violation would be shielded from immediate revocation." *Compare* § 46-18-203(7), MCA (2015), *with* § 46-18-203(8), MCA (2017). She is correct. But this could be construed as simply a policy decision within legislative purview. The revocation of a deferred or suspended misdemeanor sentence does not fetch a prison term, much less the lengthy prison stays S.B. 59 and 63 intended to prevent. Further, as noted above, the Legislature delegated authority over misdemeanor crimes to local and municipal governments. The Legislature deliberately may have chosen not to alter in this legislation how those governments conduct supervision of misdemeanants. S.B. 59 and 63 already were complex bills; further expanding them to address misdemeanor revocation may have made them unworkable. There is nothing inherently "absurd" in the Legislature treating felons and misdemeanants differently.

¶19 We conclude, therefore, that the Legislature intended to apply the 2017 amendments to § 46-18-203, MCA, to felony revocation procedures only, not to misdemeanors. As it was impossible to require exhaustion of the MIIG procedures to Pope's violations—even if only compliance violations, had she been a felon—the Municipal Court acted within its

authority when it revoked her suspended sentence. *See* § 1-3-222, MCA ("The law never requires impossibilities.").

CONCLUSION

¶20 We conclude that the 2017 amendments to § 46-18-203, MCA, enacted by S.B. 63 pertain only to revocation of felony probation and parole. The Municipal Court thus acted within its authority when it revoked Pope's suspended sentence for violating its terms and conditions. The District Court correctly affirmed the Municipal Court's revocation of Pope's suspended sentence, and its judgment is affirmed.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE