

DA 19-0408

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 142N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ANGELA MARIE SPROUT,

Defendant and Appellant.

APPEAL FROM: District Court of the Ninth Judicial District,
In and For the County of Glacier, Cause No. DC-17-80
Honorable Yvonne Laird, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Joshua R. Kotter, Attorney at Law, Billings, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Jonathan M. Krauss,
Assistant Attorney General, Helena, Montana

Terryl T. Matt, Glacier County Attorney, Joe Sherwood, Deputy County
Attorney, Cut Bank, Montana

Submitted on Briefs: May 12, 2021

Decided: June 8, 2021

Filed:


Clerk

Justice Laurie McKinnon 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 and 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 Angela Marie Sprout appeals from a Ninth Judicial District Court order revoking her deferred sentence. We affirm.

¶3 On January 2, 2018, Sprout was charged with felony custodial interference, misdemeanor criminal contempt, and misdemeanor violation of order of protection (VOOP). On July 17, 2018, Sprout pleaded guilty to felony VOOP, in violation of § 45-5-626(1), MCA, pursuant to a plea agreement and acknowledgment of waiver of rights. The plea agreement amended the VOOP to a felony (based on Sprout's history of prior offenses), dismissed the remaining two charges, and recommended a three-year deferred imposition of sentence and a \$500 fine, all of which would be suspended for a period of one year.

¶4 The District Court entered a judgment of conviction for felony VOOP and a three-year deferred imposition of sentence, including 35 enumerated conditions and a \$500 fine. The District Court's stated reasons for the deferred sentence were that both parties signed the plea agreement, it was consistent with Montana statutes regarding sentencing, the offense was a first felony offense, and Sprout was young and gainfully employed. The conditions of Sprout's deferred sentence, in relevant part, included

employment requirements and restrictions on contact with Shawn Weissenfluh, who had custody of the parties' child pursuant to an Interim Parenting Plan (parenting plan) in an ongoing custody case in Glacier County. The relevant conditions of probation stated:

4) [Sprout] must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by her supervising officer, [Sprout] must inform her employer and any other person or entity, as determined by the supervising officer, of her status on probation, parole, or other community supervision.

27) [Sprout] shall not knowingly have any contact, oral, written, electronic or through a third party, with [Weissenfluh] unless such contact is voluntarily initiated by [Weissenfluh] through the Department of Corrections. DOC staff may notify [Weissenfluh] about the availability of opportunities for facilitated contact with [Sprout] without being considered "third parties." Contact with Shawn Weissenfluh is permitted provided it occurs in accordance with the terms of any parenting plan that is in place at the time of contact.

The District Court had modified condition 27 from its original language upon Sprout's request, allowing Sprout to contact Weissenfluh to facilitate contact with their child pursuant to the parenting plan.

¶5 On the record, the District Court expressed its concerns about Sprout's ability to comply with the terms and conditions of the deferred sentence based on her misdemeanor criminal history that reflected she had difficulty complying with court orders in at least two states. The court advised Sprout that if her sentence was revoked, the court would be required to sentence her and that she would need to serve a minimum of 10 days in jail and could possibly serve up to two years. The court stressed the importance of complying with the terms and conditions of her sentence. Sprout had no questions

regarding her sentence at the time and did not appeal the judgment, deferred sentence, or any of the terms or conditions of the deferred sentence.

¶6 Sprout violated both condition 4 and condition 27, and the State filed a report of violations and a petition to revoke her deferred sentence. The State alleged that Sprout had been emailing Weissenfluh about matters not related to the parenting plan and that he felt “threatened and harassed”; the report included 27 emails from Sprout to Weissenfluh. The State also alleged that Sprout failed to maintain employment and had been terminated from employment. The District Court held a hearing advising Sprout of the alleged violations and her rights regarding the petition to revoke her deferred sentence. Sprout entered a general denial to both alleged violations.

¶7 At the evidentiary hearing on revocation, Sprout’s probation officer, John Madigan, Weissenfluh, and Sprout all testified. The District Court admitted Sprout’s 27 emails, the parenting plan, and Sprout’s exhibits, all without objection. Based on the evidence and testimony presented, the District Court found that Sprout violated condition 27 of the deferred sentence—restricting contact with Weissenfluh, other than as allowed and necessary to implement the parenting plan. The court also found that Sprout violated condition 4 of the deferred sentence, regarding Sprout’s employment. Specifically, the court found that Sprout failed to notify her probation officer that she was no longer employed and that her probation officer learned of Sprout’s unemployment on his own from Sprout’s former employer. The court concluded that the proven violations were in material breach of Sprout’s previously deferred imposition of sentence and revoked the deferred imposition of sentence.

¶8 The court concluded that the violations were not compliance violations because Sprout continued to stalk and harass Weissenfluh and Sprout's history indicated that Sprout would not be responsive to any further efforts by the Department of Corrections, Probation and Parole, to bring her into compliance with the terms and conditions of the deferred sentence. The District Court entered judgment and sentenced Sprout to a two-year commitment to the Department of Corrections, with no time suspended and no credit for street time served. The court re-imposed the same conditions that were part of the deferred sentence, with the exception of condition 27, which was modified. The modified condition required Sprout to complete a mental health and parenting evaluation, and it prohibited any contact with Weissenfluh, their child, or any of the child's paternal relatives until evaluations were completed.

¶9 The issue raised on appeal is whether the District Court properly and within its discretion revoked Sprout's deferred sentence based on her violation of the imposed conditions of her sentence. Sprout maintains the original sentence was invalid, illegal, and should be overturned because it was not "reasonably related to the objectives of rehabilitation and the protection of the victim and society" as required under § 46-18-202(1)(g), MCA. She further argues the original sentence was not "certain, consistent, and understandable" as required under § 46-18-101(3)(a), MCA. The basis of this argument is Sprout's contention that condition 27 was illegal. She argues the original sentence, through condition 27, referenced and made controlling the parenting plan without knowing whether it existed, without knowing its contents, without being able to control it or its subsequent modification, without knowing whether the

document accomplished the court's actual or lawful sentencing desires and intentions, and without knowing whether the document conformed to Montana's laws regarding sentencing. For these reasons, Sprout also argues her deferred sentence could not have been lawfully revoked for violating a condition that was illegal in the first place. She argues that her revocation sentence was, therefore, illegal.

¶10 We review a district court's decision to revoke a deferred sentence to determine whether the decision was supported by a preponderance of the evidence and, if so, whether the district court abused its discretion. *State v. Belanger*, 2008 MT 383, ¶ 9, 347 Mont. 61, 196 P.3d 1248 (citing §§ 46-18-203(6)-(7), MCA). A single violation of the conditions of a suspended or deferred sentence is sufficient to support a district court's revocation of that sentence. *See State v. Gillingham*, 2008 MT 38, ¶ 28, 341 Mont. 325, 176 P.3d 1075; *see also State v. Rudolph*, 2005 MT 41, ¶ 13, 326 Mont. 132, 107 P.3d 496, *overruled on other grounds by State v. Tirey*, 2010 MT 283, 358 Mont. 510, 247 P.3d 701. This Court reviews a criminal sentence for legality; that is, whether the sentence is within statutory parameters. *State v. Tracy*, 2005 MT 128, ¶ 12, 327 Mont. 220, 113 P.3d 297. This determination is a question of law; as such, our review is de novo. *State v. Kirkbride*, 2008 MT 178, ¶ 9, 343 Mont. 409, 185 P.3d 340.

¶11 Upon the revocation of a deferred sentence, a district court may "impose any sentence that might have been originally imposed." Section 46-18-203(7)(a)(iv), MCA. A person has the right to be sentenced under statutes that are in effect at the time of the offense. *Tracy*, ¶ 16. The relevant statute in effect at the time Sprout committed the

offense provided: “Upon conviction for a third or subsequent offense, an offender shall be fined not less than \$500 and not more than \$2,000 and be imprisoned in the county jail or state prison for a term not less than 10 days and not more than 2 years.” Section 45-5-626(3), MCA (2017).

¶12 On appeal, Sprout has not made any claim or argument that the District Court abused its discretion in revoking her deferred sentence based on a preponderance of the evidence that she violated two conditions of the deferred sentence. The appellant bears the burden of establishing error on appeal and this Court will not address an issue absent authority or developed argument. *State v. Longfellow*, 2008 MT 343, ¶ 18, 346 Mont. 286, 194 P.3d 694. Sprout has not assigned any error or made any argument, under the correct standard of review of the District Court’s revocation order, nor has she made any claim or argument that the two-year Department of Corrections commitment imposed upon revocation was outside the statutory parameters for sentencing an offender convicted of felony VOOP. *See* §§ 45-5-626(3), 46-18-203(7)(a)(iv), MCA.

¶13 Sprout did not appeal her original judgment of conviction and deferred imposition of sentence on any grounds—rendering it final and presumptively valid, correct, and legal. Yet, Sprout’s appeal rests entirely on the alleged illegality of her original sentence. In this direct appeal of the revocation of her deferred sentence, Sprout raises, for the first time, a collateral challenge to the legality of condition 27. That issue and argument is not properly before this Court on appeal of her revocation order. *See State v. Rice*, 275 Mont. 81, 85, 910 P.2d 245, 247 (1996) (“A defendant has sixty days in which to appeal a final judgment. A final judgment includes a sentence [A] judgment

[that] includes a deferred sentence is final for purposes of appeal.”); *see also* M. R. App. P. 4(5)(b); §§ 46-1-202(25), 46-21-102(1)(a), MCA. Moreover, because Sprout has failed to support her argument with citation to legal authority as required by the Montana Rules of Appellate Procedure; to preserve the issue for appeal; or to argue an exception to the contemporaneous objection rule, we decline to address her claim regarding the illegality of her original sentence in this appeal. *State v. Clausell*, 2001 MT 62, ¶¶ 48-49, 305 Mont. 1, 22 P.3d 1111; *see* M. R. App. P. 12(e)-(g). As we have previously held, “[i]t is not this Court’s obligation to conduct legal research on an appellant’s behalf or to develop legal analysis that may lend support to his [or her] position.” *Clausell*, ¶ 48.

¶14 We need not reach Sprout’s claim that condition 27 was illegal, because the revocation was also based on another violation—condition 4, regarding employment—alleged and proved by a preponderance of the evidence. Sprout does not challenge this condition on appeal. Because a single violation of the conditions of a deferred sentence is sufficient to support the District Court’s revocation of that sentence, the court’s finding that Sprout violated the employment condition is a valid basis for revocation and is dispositive. Thus, even if Sprout’s claim that condition 27 was illegal had any legal merit, or was properly before this Court, the District Court properly and within its discretion revoked the deferred sentence based on the proven and undisputed violation of condition 4.

¶15 Because Sprout raised no issue and provided no argument or authority against reversal on those grounds, we affirm the revocation order and sentence.

¶16 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.

¶17 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR