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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0557**

Candy Michelle Ostlund, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 21, 2020
Affirmed
Frisch, Judge**

Polk County District Court
File No. 60-CR-09-2026

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and Frisch, Judge.

UNPUBLISHED OPINION

FRISCH, Judge

In this appeal from an order denying postconviction relief, appellant argues that the district court revoked her probation based on clearly erroneous factual findings and that the

postconviction court erred in summarily denying her petition without addressing her arguments. We affirm.

FACTS

In 2008, appellant Candy Michelle Ostlund purchased medications containing pseudoephedrine from pharmacies in Minnesota to produce methamphetamine in another state. Respondent State of Minnesota charged Ostlund with conspiring to manufacture methamphetamine in violation of Minn. Stat. §§ 152.021, subds. 2a(a), 3(a), .096, subd. 1 (2006). Ostlund pleaded guilty as charged. The district court imposed a 132-month sentence, stayed execution of the sentence for 30 years, and placed Ostlund on supervised probation. The stay of execution constituted a downward dispositional departure from the Minnesota Sentencing Guidelines.

On January 18, 2018, Ostlund was arrested on suspicion of firearm theft and first-degree burglary. A subsequent probation-violation report contained allegations that Ostlund violated the terms of her probation by (1) failing to remain law-abiding, (2) possessing a firearm, (3) using methamphetamine, and (4) failing to maintain contact with her probation officer. The probation-violation report attached the January 18, 2018 criminal complaint, which contained allegations that officers found a rifle and a shotgun in the vehicle driven by Ostlund and her associate to the burglary scene and that the rifle was later identified as belonging to the burglarized residence. Ostlund ultimately pleaded guilty to second-degree burglary in violation of Minn. Stat. § 609.582, subd. 2 (2016), and the state dismissed the firearm charge. The probation-violation report further contained allegations that, at the time of her arrest for burglary, a test indicated methamphetamine in

Ostlund's system and Ostlund admitted to ingesting methamphetamine two days before the arrest. Probation reported that Ostlund generally "ha[d] not been doing well" over the past year, had difficulty reporting to probation even when given ample time, and "still appear[ed] to not take responsibility."

The district court held an admit/deny hearing regarding the probation violations. Ostlund admitted to using methamphetamine and made a qualified admission that she failed to maintain contact with her probation officer. She further admitted that she violated the terms of her probation by committing the new felony offense of second-degree burglary. She denied that she possessed a firearm and maintained that it was her associate who took the firearms during the burglary.

The district court later held a disposition hearing. In its argument, the state emphasized the presence of firearms in the burglary; argued that the record showed Ostlund was under the influence of methamphetamine while driving the vehicle on January 18, 2018; and underscored the seriousness of her underlying convictions. Ostlund again admitted to using methamphetamine but maintained that she consumed the methamphetamine two days before the burglary, was not driving the night of the burglary, and had no involvement in her associate's theft or possession of firearms.

The district court found that execution of Ostlund's sentence was necessary to protect public safety and to deter Ostlund from committing further crimes, specifically stating that the second-degree burglary conviction alone supported the revocation of her probation. The district court further discussed Ostlund's history of substance use; inferred that Ostlund was under the influence of methamphetamine on the date of the offense,

including while driving the vehicle; and noted that firearms were involved in the January 18, 2018 incident although not part of Ostlund's conviction. The district court revoked Ostlund's probation and ordered execution of her sentence.

Ostlund later filed a petition for postconviction relief,¹ contending that the district court abused its discretion in revoking her probation because the record did not support a conclusion that Ostlund had any involvement with a firearm or that she drove under the influence of methamphetamine. The postconviction court summarily denied Ostlund's petition, finding no error. Ostlund now appeals the denial of her petition for postconviction relief.

D E C I S I O N

Ostlund confirmed at oral argument that she challenges the substance of the postconviction court's decision to uphold her probation revocation, not the failure of the postconviction court to hold an evidentiary hearing.² Specifically, Ostlund contends that her probation revocation was based on clearly erroneous factual findings that (1) she drove under the influence of methamphetamine and (2) she was involved with the firearms found in the vehicle.

¹ Ostlund first filed a direct appeal, but we dismissed the appeal as untimely. *State v. Ostlund*, No. A18-1590 (Minn. App. Nov. 20, 2018) (order).

² Upon receiving a petition for postconviction relief, a postconviction court must ordinarily hold an evidentiary hearing unless the petition, files, and records of the proceeding "conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2018). The record shows that Ostlund did not request such a hearing even when prompted by the postconviction court, and it is not clear what evidence Ostlund would have presented at such a hearing.

Generally, we review for an abuse of discretion the denial of a petition for postconviction relief, *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017), or a probation-revocation decision, *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). Ostlund argues that the postconviction court abused its discretion, while the state argues we should either deem Ostlund’s arguments forfeited or review for plain error. Because we conclude that the postconviction court did not abuse its discretion, we assume without deciding that abuse of discretion is the applicable standard of review.

“A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). We review any factual findings for clear error. *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008). Such findings must not be disturbed unless we are “left with the definite and firm conviction that a mistake has been made.” *Id.*

The record shows the district court specifically revoked Ostlund’s probation because of the new offense, finding “that the [January 18, 2018] offense alone [wa]s sufficient to support revocation” and “not[ing] that second degree burglary alone is a very significant offense.” Although the district court commented about unproven and disputed driving conduct when discussing whether confinement was necessary to protect the public, the record shows that these comments were not the basis for the findings and conclusions of the district court. Further, the district court *also* concluded that failure to revoke probation would “unduly depreciate the seriousness of the underlying crime and offense and its status as a probation violation,” and in so doing made *no* reference to any of the

contested factual findings. *See* Minn. R. Crim. P. 31.01. On appeal, Ostlund does not challenge this additional basis for probation revocation, which the district court attributed solely to the singular new felony conviction and corresponding probation violation.

Even so, the additional statements by the district court about the circumstances surrounding the new offense do not demonstrate clear error. The district court noted Ostlund's "long history of drug use and drug involvement." And, although the district court acknowledged that Ostlund was not convicted of any driving-related conduct or possession of firearms, the court expressed "concerns" where firearms are "involved in any offense" and "especially when a person is using methamphetamine." These statements find support in the record. At the admit/deny hearing, Ostlund's counsel specifically stated that "there was a firearm involved" in the new offense. The district court simply referenced the fact that firearms were involved and did not make any finding that Ostlund herself possessed a firearm. Also during the admit/deny hearing, Ostlund specifically admitted to using methamphetamine in January 2018, which was the time period in which the new burglary offense occurred. The probation-violation report further states that Ostlund tested positive for methamphetamine on the date of the new offense, although confirmation of the test results was not available at the time of the admit/deny hearing.

Accordingly, the district court did not abuse its discretion in revoking Ostlund's probation. The facts in the record show that Ostlund failed to remain law-abiding, relapsed on methamphetamine, admitted to using methamphetamine before the burglary offense, and associated with a person who illegally possessed firearms. Logic and the facts in the record support the conclusion by the district court that probation was no longer sufficient

to protect public safety and to deter Ostlund from committing further crimes and that continued probation would unduly depreciate the seriousness of the new felony offense for which she was convicted.³ The postconviction court did not abuse its discretion.

Affirmed.

³ Ostlund also argues that the postconviction court failed to adequately consider and address her arguments when denying her petition. Given our analysis herein, we see no abuse of discretion in the order of the postconviction court.