

IN THE COURT OF APPEALS OF IOWA

No. 17-0774
Filed November 22, 2017

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KELLY RENAE OPPEWALL,
Defendant-Appellant.

Appeal from the Iowa District Court for Marion County, Martha L. Mertz,
Judge.

Kelly Oppewall appeals following the revocation of her deferred judgment.

AFFIRMED.

Patrick W. O'Bryan of O'Bryan Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Bridget A. Chambers, Assistant
Attorney General, for appellee.

Considered by Danilson, C.J., and Tabor and McDonald, JJ.

DANILSON, Chief Judge.

On October 10, 2014, Kelly Oppewall pled guilty to the offense of possession of morphine with intent to deliver. On January 9, 2015, the district court deferred judgment and placed Oppewall on probation for a period of two years.

On August 10, 2016, Oppewall's probation officer filed a report of violations: Oppewall had moved and had not informed her probation officer of the move for approximately one month; she had paid only \$25 of her \$300 probation supervision fee, and had paid only \$450 of the \$1510.57 in court costs and fines she was required to pay; and on three occasions, Oppewall had tested positive for controlled substances—THC in February 2015, oxycodone in March 2015, and methamphetamine in April 2016. The probation officer recommended revocation of Oppewall's probation.

On August 24, 2016, Oppewall's probation officer filed a second report of violation, reporting Oppewall had been arrested the previous day and charged with theft in the second degree and possession of oxycodone with intent to deliver. An addendum to that report was filed on March 28, 2017, noting Oppewall's urinalysis on March 27, 2017, had been positive for methamphetamine and Oppewall had paid nothing on her financial obligations since the original report of violation was filed in August 2016. In addition, the probation officer reported police had been called to intervene in arguments between Oppewall and her parents on January 4, February 20, March 9, and twice on March 24, 2017.

A contested probation adjudicatory hearing was held at which Oppewall's probation officer testified regarding several violations. Oppewall did not present any evidence disputing the probation officer's testimony at the adjudicatory hearing. During the dispositional hearing, Oppewall testified and acknowledged owing court costs and fines and missing an appointment with her probation officer. However, she denied using illegal substances and having a substance-abuse problem. Nonetheless, she stated she would be willing to enter a treatment program. She acknowledged the need for mental-health treatment.

The court revoked the deferred judgment and sentenced Oppewall to a term of imprisonment not to exceed ten years, with the one-third mandatory minimum cut in half. In sentencing Oppewall, the court stated, "You don't seem to have an ability, or at least the desire to follow the rules." With no confidence Oppewall would succeed with further probation, the court concluded incarceration was necessary and would aid Oppewall in receiving the treatment she needed as well as serve to protect the community.

On appeal, Oppewall asserts the district court abused its discretion in revoking her deferred judgment because the State failed to show she was not cooperating with the program of probation. We find no abuse of the district court's discretion in revoking Oppewall's deferred judgment, and we therefore affirm. See Iowa Ct. R. 21.26(1)(b), (c), (e).

AFFIRMED.