

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

---

State of North Dakota,	)	Supreme Court File No. 20180108
	)	
Plaintiff and Appellee,	)	Grand Forks County District Court
	)	Case No. 18-2016-CR-00008
vs.	)	
	)	
Dana Scott Schlieve,	)	
	)	
Defendant and Appellant,	)	

---

ON APPEAL FROM ORDER FROM A CRIMINAL JUDGMENT  
FROM THE DISTRICT COURT DATED FEBRUARY 19, 2018  
NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE LOLITA HARTL ROMANICK, PRESIDING

---

**BRIEF OF APPELLEE**

---

Faye A. Jasmer (05428)  
Assistant State's Attorney  
Grand Forks County  
P.O. Box 5607  
Grand Forks, ND 58206  
(701) 780-8281  
E-Service Address:  
sasupportstaff@gfcounty.org

Corey J. Haller  
Senior Legal Intern  
P.O. Box 5607  
Grand Forks, ND 58206  
(701) 780-8281

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF THE ISSUES .....v

STATEMENT OF THE CASE..... ¶1

STATEMENT OF THE FACTS ..... ¶3

JURISDICTIONAL STATEMENT ..... ¶13

STANDARD OF REVIEW ..... ¶14

LAW AND ARGUMENT ..... ¶16

I. BECAUSE THE DISTRICT COURT ACTED REASONABLY, THE  
DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT  
DECIDED REVOCATION WAS WARRANTED..... ¶16

II. BECAUSE THE SENTENCE IMPOSED WAS AUTHORIZED BY  
STATUTE, THE DISTRICT COURT DID NOT ABUSE ITS  
DISCRETION..... ¶20

CONCLUSION..... ¶31

**TABLE OF AUTHORITIES**

**FEDERAL COURT CASES**

Griffith v. Kentucky, 479 U.S. 314 (1987)..... ¶25

**NORTH DAKOTA STATE CASES**

Ex Parte Chambers, 69 N.D. 309, 285 N.W. 862 (1939)..... ¶25

State v. Causer, 2004 ND 75, 678 N.W.2d 552..... ¶¶16, 17

State v. Clark, 2001 ND 194, 636 N.W.2d 660..... ¶16

State v. Cook, 2018 ND 100, 910 N.W.2d 179..... ¶¶24, 25, 29

State v. Cummings, 386 N.W.2d 468 (N.D. 1986)..... ¶24

State v. Ennis, 464 N.W.2d 378 (N.D. 1990)..... ¶¶20, 26

State v. Iverson, 2006 ND 193, 721 N.W.2d 396..... ¶¶24, 25

State v. Kensmoe, 2001 ND 190, 636 N.W.2d 183..... ¶16

State v. Klein, 2014 ND 166, 851 N.W.2d 159..... ¶26

State v. Jacobsen, 2008 ND 52, 746 N.W.2d 405..... ¶¶17, 28

State v. Lowe, 2015 ND 126, 863 N.W.2d 525..... ¶20

State v. McAvoy, 2007 ND 178, 741 N.W.2d 198..... ¶14

State v. Salveson, 2006 ND 169, 719 N.W.2d 747..... ¶20

State v. Stavig, 2006 ND 63, 711 N.W.2d 183..... ¶17

State v. Ulmer, 1999 ND 245, 603 N.W.2d 865..... ¶20

State v. Wardner, 2006 ND 256, 725 N.W.2d 215..... ¶¶16, 17

**CONSTITUTIONS**

N.D. Const. art. IV, § 13..... ¶22

N.D. Const. art. VI, § 2..... ¶13

N.D. Const. art. VI, § 8 ..... ¶13

**STATUTES**

N.D.C.C. § 1-02-10 ..... ¶23

N.D.C.C. § 12-46-24 ..... ¶21

N.D.C.C. § 12-47-21 ..... ¶21

N.D.C.C. § 12.1-02-02 ..... ¶21

N.D.C.C. § 12.1-23-02(3) ..... ¶3

N.D.C.C. § 12.1-23-05(3)(d) ..... ¶3

N.D.C.C. § 12.1-32-01(4) ..... ¶3

N.D.C.C. § 12.1-32-01(5) ..... ¶3

N.D.C.C. § 12.1-32-01(6) ..... ¶3

N.D.C.C. § 12.1-32-06.1 ..... ¶26

N.D.C.C. § 19-03.1-07(5)(c) ..... ¶3

N.D.C.C. § 19-03.1-23(7) ..... ¶¶1, 3, 21, 22

N.D.C.C. § 19-03.1-23(8)(b) ..... ¶22

N.D.C.C. § 27-05-06 ..... ¶13

N.D.C.C. § 29-28-03 ..... ¶13

N.D.C.C. § 29-28-06 ..... ¶13

N.D.C.C. § 39-08-01(1)(c) ..... ¶3

N.D.C.C. § 39-08-01(1)(e)(2) ..... ¶3

N.D.C.C. § 39-08-01(2) ..... ¶3

N.D.C.C. § 39-08-01(3) ..... ¶3

N.D.C.C. § 39-08-01(5)(a)(1) ..... ¶3

N.D.C.C. § 39-08-03.....	¶1
N.D.C.C. § 39-08-03(1).....	¶3
N.D.C.C. § 62.1-01-01.....	¶1
N.D.C.C. § 62.1-01-01(1).....	¶3
N.D.C.C. § 62.1-02-10.....	¶¶1, 3
N.D.C.C. § 62.1-04-01.....	¶3
N.D.C.C. § 62.1-04-02.....	¶3
N.D.C.C. § 62.1-04-05.....	¶3
<b>NORTH DAKOTA RULES</b>	
N.D.R.AppP. 4(b).....	¶13
N.D.R.App.P. 4(b)(1)(A).....	¶¶4, 27
N.D.R.Crim.P. 32(f)(3)(B).....	¶28
<b>OTHER</b>	
S.L. 2017, ch. 108 (H.B. 1041).....	¶¶21, 22

**STATEMENT OF THE ISSUES**

- I. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DECIDED REVOCATION WAS WARRANTED.
  
- II. WHETHER THE SENTENCE THE DISTRICT COURT IMPOSED WAS WITHIN THE RANGE AUTHORIZED BY STATUTE.

## STATEMENT OF THE CASE

[¶1] This is a criminal matter on direct appeal from the Northeast Central Judicial District, Grand Forks County Criminal Judgment. (File 18-2016-CR-00008, Register of Actions<sup>1</sup> at Index 134). The case was before the district court in State v. Schlieve, 18-2016-CR-00008. The information was filed with court on January 4, 2016. (File 8 at Index 2. The defendant-appellant, Dana Scott Schlieve (“Schlieve”), was charged and pleaded guilty to Count I: Possession of Methamphetamine, in violation of N.D.C.C. § 19-03.1-23(7), a Class C Felony at the time of sentencing, Count III: Carrying A Concealed Firearm or Weapon, in violation of N.D.C.C. § 62.1-01-01, a Class A Misdemeanor, Count IV: Carrying A Loaded Firearm In Vehicle, in violation of N.D.C.C. § 62.1-02-10, a Class B Misdemeanor, and Count VII: Reckless Driving, in violation of N.D.C.C. § 39-08-03, a Class B Misdemeanor. (File 8 at Index 65).

[¶2] On November 22, 2016, a Petition for Revocation of Probation was filed with the district court. (File 8 at Index 67). On April 20, 2017, the district court executed a corrected Order for Consequences on Revocation of Probation Petition resulting in ten (10) days local incarceration and a subsequent return to supervised probation. (File 8 at Index 106). A Petition for Revocation was filed on August 14, 2017. (File 8 at Index 112). An amended Petition for Revocation was filed on January 5, 2018. (File 8 at Index 126). The district court ordered the revocation of the Schlieve’s probation, re-sentenced him, and terminated his supervised probation. (File 8 at Index 134). Schlieve timely appealed the district court’s Order for Revocation, Re-Sentence, And Termination of Supervised Probation in this case. (See File 8 at Index 143).

---

<sup>1</sup> File 18-2016-CR-00008, Register of Actions: hereafter “File 8”.

## STATEMENT OF FACTS

[¶3] On January 4, 2016, Dana Scott Schlieve was charged with: Count I: Possession of Methamphetamine, in violation of N.D.C.C. §§ 19-03.1-23(7), 19-03.1-07(5)(c), and 12.1-32-01(4), a Class C Felony; Count II: Theft of Property, in violation of N.D.C.C. §§ 12.1-23-02(3), 12.1-23-05(3)(d), and 12.1-32-01(4), a Class C Felony; Count III: Carrying a Concealed Weapon, in violation of N.D.C.C. §§ 62.1-01-01(1), 62.1-04-01, 62.1-04-02, 62.1-04-05, and 12.1-32-01(5), a Class A Misdemeanor; Count IV: Carrying Loaded Firearm in Vehicle, in violation of N.D.C.C. §§ 62.1-02-10 and 12.1-32-01(6), a Class B Misdemeanor; Count V: Driving Under the Influence, in violation of N.D.C.C. §§ 39-08-01(1)(c), 39-08-01(3), 39-08-01(5)(a)(1), and 12.1-32-01(6), a Class B Misdemeanor; Count VI: Refusal to Submit to Chemical Testing, in violation of N.D.C.C. §§ 39-08-01(1)(e)(2), 39-08-01(2), 39-08-01(3), 39-08-01(5)(a)(1), and 12.1-32-01(6), a Class B Misdemeanor; and Count VII: Reckless Driving, in violation of N.D.C.C §§ 39-08-03(1) and 12.1-32-01(6), a Class B Misdemeanor. (File 8 at Index 2).

[¶4] On June 30, 2016, Schlieve entered into a plea agreement pleading guilty to Counts I, III, IV, and VII in exchange for the State dismissing Counts II, V, and VI. (File 8 at Index 65). The plea agreement required Schlieve to be incarcerated with the Grand Forks County Correctional Center for 365 days with 290 days suspended for a period of two (2) years and two (2) years of supervised probation. (*Id.*) The judgment confirming the plea agreement was filed on July 1, 2016. (File 8 at Index 66). Schlieve's right to appeal the final judgment expired on July 31, 2016. See N.D.R.App.P. 4(b)(1)(A).



[¶5] On April 4, 2017, a revocation hearing was held regarding the November 3, 2016, Petition for Revocation of Probation. (File 8 at Index 97); see also supra at ¶2. The allegation was that Schlieve did not contact probation and parole as directed. (Id.) On April 20, 2017, the district court executed a Corrected Order for Consequences on Revocation of Probation Petition resulting in ten (10) days of local incarceration and a subsequent return to supervised probation rather than revoking Schlieve's probation. (File 8 at Index 106)

[¶6] On August 14, 2017, the State filed another revocation of probation. (File 8 at Index 112). This petition stated Schlieve did not contact probation and parole as directed and he tested positive for controlled substances. (Id.) On January 12, 2018, the State moved to amend the petition to include criminal convictions from Ramsey and Benson Counties based on allegations from the end of July, 2017. (File 8 at Index 126).

[¶7] On February 13, 2018, a revocation of probation hearing was held; Schlieve admitted to the allegations as they were set forth in the amended petition for revocation. (Revocation of Probation Hearing Transcript ("Tr.") p. 9). Without specifically identifying the bill number or statute, Schlieve asked whether his methamphetamine possession charge should be considered a misdemeanor. (Tr. p. 13). The district court concluded that because the methamphetamine charge was a C felony at the time of the offense and the initial sentencing, and because the change to the law was not retroactive, it stayed a C felony for resentencing. (Tr. p. 13). The State also noted that Schlieve agreed to plea to a C felony charge for methamphetamine possession as a part of his plea agreement. (Tr. p. 13; see also File 8 at Index 65).

[¶8] Additionally, Schlieve asked “[c]ould I just get my suspended time and run it concurrent with what I got to do already?” (Tr. p. 14). The State explained the five (5) year recommendation to the court by citing the fact that Schlieve already had a five (5) year sentence from Ramsey County Case No. 36-2017-CR-00443, had previously violated a probation sentence on April 4, 2017, and had numerous subsequent criminal charges. (Tr. p. 14; see also File 8 at Index 134 ¶2). The State noted the reasons for his five (5) year sentence, namely charges on preventing arrest, possession of a firearm or dangerous weapon in a liquor establishment, A misdemeanor ingesting a controlled substance, C felony fleeing or attempting to elude a police officer, and reckless endangerment. (Tr. p. 14).

[¶9] The district court concluded by resentencing Schlieve as follows:

“Supervision will be revoked. In Count 1, [Schlieve] will be sentenced to five years to run concurrent with both the Benson and Ramsey County case. You will have credit for the 121 days. 75 days on the original count, 10 days as a consequence you served as an order for consequence in lieu of revocation of probation, and from January 9th through [February 13, 2018] for 36 days for that period.

In addition, your supervised probation will be terminated. I’m going to order that any unpaid fines and fees be reduced to civil judgment.

On Count 3, the A misdemeanor, you are, your sentence is revoked and you are resentenced to 121 days. You have credit for that full 121 days as previously stated.

The basis for this is the fact that you have continued to commit violations while you were out on probation and that is concerning to the Court. Probation was not a successful endeavor for you, and the fact of the matter is that is the potential sentence that you could have had at the outset, so it is a sentence that is within the law and meets the circumstances of this case.

(Tr. p. 15).

[¶10] As further evidence of the Schlieve’s violation of probation, and as support for re-sentencing, the district court cited in its Order for Revocation of Probation, Re-Sentence, and Termination of Supervised Probation (“Order”), dated February 19, 2018, Schlieve’s violations of conditions 1, 7, and 13, of the Conditions for Sentence to Probation Deferred or Suspended Sentence Pursuant to the Order of the Court. (File 8 at Index 66, 134 ¶2). The violations arose from: 1) Schlieve failing to show for an office visit on April 24, 2017; testing positive for methamphetamine, oxycodone, and benzodiazepines on July 26, 2017; 2) being found guilty of Fleeing or Attempting to Elude a Police Officer, a Class C Felony, and Reckless Endangerment, a Class C Felony, and Driving While License Suspended, a Class B Misdemeanor, in Ramsey County on January 5, 2017; and 3) pleading guilty to Prohibited Possession of Firearm, a Class C Felony, Preventing Arrest, a Class C Felony, Possession of Firearm of Dangerous Weapon in Liquor Establishment, a Class A Misdemeanor, Ingesting a Controlled Substance, a Class A Misdemeanor in Benson County on December 21, 2017. (File 8 at Index 134 ¶2; see also Ramsey County Case 36-2017-CR-00443; Benson County Case 03-2017-CR-00081).

[¶11] As a result, the district court found “that the violations admitted to by Defendant were either intentional or inexcusable, and the need for confinement outweighs policies favoring probation.” (File 8 at Index 134 ¶5).

[¶12] Schlieve appeals the sentence he received at the February 13, 2018, revocation of probation hearing arguing that the district court abused its discretion when it decided revocation was warranted. (Appellant’s Brief at ¶10).

## JURISDICTIONAL STATEMENT

[¶13] The district court had jurisdiction under N.D. Const. art. VI, § 8 and N.D.C.C. § 27-05-06. This appeal was timely under N.D.R.App.P. 4(b). This Court has jurisdiction under N.D. Const. art. VI, § 2 and N.D.C.C. § 29-28-06 which states:

An appeal to the Supreme Court provided for in this chapter may be taken as a matter of right. N.D.C.C. § 29-28-03. An appeal may be taken by the defendant from:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for new trial; or
5. An order made after judgment affecting any substantial right of the party.

N.D.C.C. § 29-28-06.

## STANDARD OF REVIEW

[¶14] This Court reviews the district court's decision to revoke probation with a two-part test. State v. McAvoy, 2007 ND 178, ¶ 7, 741 N.W.2d 198. First, this Court examines the district court's factual findings under the clearly erroneous standard, and then determine whether the district court abused its discretion when it decided revocation was warranted. Id. at ¶¶ 8, 17.

[¶15] A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, there is no evidence to support it, or this Court is convinced, on the basis of the entire record, that a mistake has been made. Id. at ¶ 8. The allegations and underlying facts of the revocation were stipulated to by the appellant. (Appellant's Brief at ¶11). Accordingly, the first prong of the test is not at issue in the current case. The second prong, whether the trial court abused its discretion when it decided revocation was warranted, is at issue in the case before the Court.

## LAW AND ARGUMENT

I. BECAUSE THE DISTRICT COURT ACTED REASONABLY, THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT DECIDED REVOCATION WAS WARRANTED.

[¶16] The abuse-of-discretion standard is used to review a district court's decision that revocation of probation was warranted. State v. Wardner, 2006 ND 256, ¶ 19, 725 N.W.2d 215 (citing State v. Causer, 2004 ND 75, ¶ 32, 678 N.W.2d 552). A district court abuses its discretion when it acts in an arbitrary, unreasonable, unconscionable, or capricious manner, or if its decision is not the product of a rational mental process leading to a reasoned determination, or if it misinterprets or misapplies the law. Id. at ¶ 26 (citing State v. Clark, 2001 ND 194, ¶ 8, 636 N.W.2d 660; State v. Kensmoe, 2001 ND 190, ¶ 7, 636 N.W.2d 183).

[¶17] During a revocation hearing, the district court's determinations on whether the defendant violated the terms of probation are findings of fact. State v. Jacobsen, 2008 ND 52, ¶ 10, 746 N.W.2d 405, 408; see also Wardner, 2006 ND 256, ¶ 19, 725 N.W.2d 215; Stave v. Stavig, 2006 ND 63, ¶ 6, 711 N.W.2d 183; Causer, 2004 ND 75, ¶ 31, 678 N.W.2d 552. Moreover, the State need only prove a probation violation by a preponderance of the evidence. Id.

[¶18] In this case, Schlieve does not dispute the factual basis for the revocation of probation. (See Appellant's Brief at ¶11). In addition, based on the violations of Schlieve's probation and the evidence presented at the February 13, 2018, revocation of probation hearing, the district court made the decision to revoke probation in a way that was not arbitrary, not unreasonable, not unconscionable, nor in a capricious manner. See supra ¶¶7-11. In addition, because the State met its burden of proving a probation

violation by a preponderance of the evidence, the decision to revoke probation was a product of a rational mental process leading to a reasoned determination. See supra ¶7-11.

[¶19] Accordingly, the district court did not abuse its discretion when it revoked Schlieve's probation.

II. BECAUSE THE SENTENCE IMPOSED WAS AUTHORIZED BY STATUTE, THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION.

[¶20] This Court's review of a criminal sentence is limited:

“A trial judge is ordinarily allowed the widest range of discretion in fixing a criminal sentence. On appeal of a claim that a sentence is excessive or incorrect, this court has no power to review the discretion of a sentencing court in fixing a term of imprisonment within the range authorized by statute. Appellate review of a criminal sentence is confined to determining whether the judge acted within the limits prescribed by statute, or substantially relied on an impermissible factor . . . .”

State v. Lowe, 2015 ND 126, ¶ 7, 863 N.W.2d 525 (quoting State v. Ennis, 464 N.W.2d 378, 382 (N.D. 1990) (internal citations omitted)). Moreover, the district court “has the authority to determine whether a sentence should run concurrent with or consecutive to another sentence.” State v. Salvesson, 2006 ND 169, ¶ 4, 719 N.W.2d 747 (citing State v. Ulmer, 1999 ND 245, ¶ 4, 603 N.W.2d 865).

[¶21] In the case before the Court, Schlieve was charged with Possession of Methamphetamine, in violation of § 19-03.1-23(7), as it was written prior to the North Dakota Century Code amendments of 2017. This subsection provided:

It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription

or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, *any person who violates this subsection is guilty of a class C felony . . . .*

S.L. 2017, ch. 108 (H.B. 1041) § 12 (emphasis added). Schlieve pled guilty on June 30, 2016, and was subsequently sentenced to incarceration with the Grand Forks County Correctional Center for 365 days with 290 days suspended for a period of two (2) years and two (2) years of supervised probation. See supra ¶4.

[¶22] 295 days after Schlieve signed his plea agreement and the district court signed the criminal judgment, on April 21, 2017, North Dakota House Bill 1041 was approved and filed. S.L. 2017, ch. 108 (H.B. 1041). Section 23 of the Bill declared certain sections emergency measures, including Section 12 which amended N.D.C.C. § 19-03.1-23(7) with regard to charges for first-offense Possession of a Controlled Substance. S.L. 2017, ch. 108 (H.B. 1041) § 23. No part of North Dakota House Bill 1041 stated it was to be applied retroactively. See S.L. 2017, ch. 108 (H.B. 1041). Those sections were declared emergency measures and took effect upon filing. Id. see also N.D. Const. art. IV, § 13. The amended version of that statute (“2017 amendments”) provides as follows:

It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, *any person who violates this subsection is*



*guilty of a class A misdemeanor for a first offense under this subsection and a class C felony for a second [offense].*

...

N.D.C.C. § 19-03.1-23(8)(b), S.L. 2017, ch. 108 (H.B. 1041) § 12, eff. April 21, 2017 (emphasis added)).

[¶23] Schlieve argues that the 2017 amendments should apply retroactively to his case. (Appellant’s Brief at ¶13). Regarding retroactive laws, the North Dakota Century Code states “[n]o part of this code is retroactive unless it is expressly declared to be so.” N.D.C.C. §1-02-10. However, this Court has found exceptions to this rule. See infra ¶¶24-28.

[¶24] Recently, in a case similar to the one before the Court, this Court found the 2017 amendments to be ameliorating penal legislation and therefore meet an exception to apply retroactively. State v. Cook, 2018 ND 100, ¶ 24, 910 N.W.2d 179; (see also State v. Iverson, 2006 ND 193, ¶ 6-7, 721 N.W.2d 396 (defining ameliorating legislation as laws which confer benefits to defendants)). However, the Court also noted that a statute “cannot be retroactively applied when it becomes effective after a person has been finally convicted otherwise it would constitute an invalid exercise by the legislature of the executive pardoning power.” Id. see also Iverson, 2006 ND 193, ¶ 7, 721 N.W.2d 396 (holding that retroactive application is disfavored because it creates new legal responsibilities based on past conduct); State v. Cummings, 386 N.W.2d 468, 472 n. 2 (N.D. 1986). This Court held that the 2017 amendments could apply retroactively to the defendant in Cook because the defendant had not been finally convicted before the 2017 because his right to appeal had not been exhausted prior to the amendments taking effect. Id. at ¶24.

[¶25] Unlike the defendant in Cook, Schlieve’s July 1, 2016, Criminal Judgment was final as it was signed by the district court and his right to appeal was exhausted prior to the 2017 amendments taking effect on April 21, 2017. See supra ¶¶4, 22. This Court has never clearly defined final convictions. Iverson, 2006 ND 193, ¶ 7, 721 N.W.2d 396. “[H]owever, the United States Supreme Court has stated that a final conviction means “a case in which a judgment of conviction has been rendered [and] the availability of appeal [has been] exhausted . . . .” Id. (quoting Griffith v. Kentucky, 479 U.S. 314, 321 n. 6 (1987)); see also Ex Parte Chambers, 69 N.D. 309, 315, 285 N.W. 862 864-65 (1939) (stating that final conviction means either a verdict of guilty or a judgment and sentence of the trial court upon a verdict or plea of guilty). This appeal is the result of a guilty plea and sentence based on a 2016 charge for Possession of Methamphetamine. See supra ¶4. Accordingly, the district court’s July 1, 2016, Criminal Judgment was a final conviction.

[¶26] Regarding a sentence to probation, as in this case, this Court has held that a judgment that includes a sentence to probation constitutes a final judgment for all purposes other than a court modifying the conditions of probation. State v. Klein, 2014 ND 166, ¶ 14, 851 N.W.2d 159 (emphasis added); see also N.D.C.C. § 12.1-32-06.1 (stating “[n]otwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes”); Ennis, 464 N.W.2d 378, 381 (N.D. 1990) (holding that “a sentence within the range authorized by the legislature, upon revocation of probation, does not increase a ‘final’ sentence or impose multiple punishments for the same offense”). This appeal is a result of a case that includes a sentence to probation. See

supra at ¶4. Accordingly, the district court's July 1, 2016, Criminal Judgment was a final conviction.

[¶27] In addition, the North Dakota Rules of Appellate Procedure states “[i]n a criminal case, a defendant's notice of appeal must be filed with the clerk of the supreme court within 30 days after the entry of the judgment or order being appealed.”

N.D.R.App.P. 4(b)(1)(A). In this case, Schlieve pled guilty to Possession of Methamphetamine on June 30, 2016, and the district court's order was filed on July 1, 2016. See supra at ¶4. In the thirty (30) days following the district court's July 1, 2016 order, there was no appeal filed by Schlieve. (See File 8). Accordingly, the district court's July 1, 2016, Criminal Judgment was a final conviction.

[¶28] Moreover, this Court has held that probation revocation hearings are not a stage of the criminal proceedings, and the State need only prove a probation violation by a preponderance of the evidence. State v. Jacobsen, 2008 ND 52, ¶ 10, 746 N.W.2d 405; (citing N.D.R.Crim.P. 32(f)(3)(B)). This appeal is a result of a probation revocation hearing. See supra at ¶12. Accordingly, the district court's July 1, 2016, Criminal Judgment was a final conviction.

[¶29] In this case, Schlieve's argument that the 2017 amendments should apply to his case is flawed because the district court's July 1, 2016, Criminal Judgment was a final conviction that would have taken place prior to when the 2017 amendments went into effect on April 21, 2017. In addition, the 2017 amendments do not expressly state that they apply retroactively. Therefore, the 2017 amendments would not apply to Schlieve because new laws, even if they are ameliorating legislation, do not apply retroactively to

final convictions unless it is expressly stated in the law. See Cook, 2018 ND 100, ¶ 24, 910 N.W.2d 179.

[¶30] Moreover, the February, 2018, revocation of probation hearing and the Order for Revocation of Probation, Re-Sentence, and Termination of Supervised Probation were not a stage of the criminal proceedings, and they were simply enforcing the July 1, 2016 Criminal Judgment. See supra ¶28. Therefore, because the district court applied a sentence authorized by statute at the time of the final judgment, the district court did not err. Accordingly, the district court did not abuse its discretion.

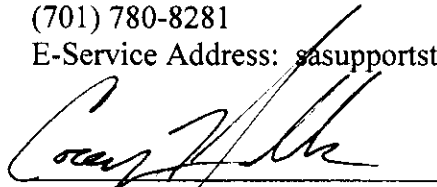
### CONCLUSION

[¶31] Because the district court's revocation of probation was warranted, and because the district court's sentence was authorized by statute, this Court should affirm the lower court's decision.

[¶32] Respectfully submitted this 19th day of June, 2018.



Faye A. Jasmer (05428)  
Assistant State's Attorney  
Grand Forks County  
P.O. Box 5607  
Grand Forks, ND 58206  
(701) 780-8281  
E-Service Address: [sasupportstaff@gfcounty.org](mailto:sasupportstaff@gfcounty.org)



Corey J. Haller  
Senior Legal Intern

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

---

State of North Dakota,	)	Supreme Court File No. 20180108
	)	
Plaintiff and Appellee,	)	Grand Forks County District Court
	)	Case No. 18-2016-CR-00008
vs.	)	
	)	
Dana Scott Schlieve,	)	
	)	
Defendant and Appellant,	)	

---

ON APPEAL FROM ORDER FROM A CRIMINAL JUDGMENT  
FROM THE DISTRICT COURT DATED FEBRUARY 19, 2018  
NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE LOLITA HARTL ROMANICK, PRESIDING

---

**AFFIDAVIT OF SERVICE**

---

STATE OF NORTH DAKOTA )  
   ) SS  
COUNTY OF GRAND FORKS)

The undersigned, being of legal age, being first duly sworn deposes and says that on the 19<sup>th</sup> day of June, 2018, she served via e-mail true copies of the following documents:

**BRIEF OF APPELLEE**  
**NOTICE OF CERTIFIED STUDENT REPRESENTATION**

and that said email was served on the address of:

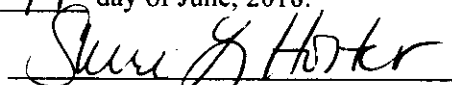
Kiara Kraus-Parr and said e-mail address is: [service@kpmwlaw.com](mailto:service@kpmwlaw.com)

At the office of the Grand Forks County States Attorney's Office.

  
States Attorney's Office

Subscribed and sworn to before me this 19<sup>th</sup> day of June, 2018.

SHERI L HOLTER  
Notary Public  
State of North Dakota  
My Commission Expires Sept. 17, 2022

  
Notary Public