

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON ROBERT SPARKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43517

**FILED**

MAR 08 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a district court order revoking probation. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On July 8, 2003, appellant Jason Robert Sparks was convicted, pursuant to a guilty plea, of one count of felony theft. The district court sentenced Sparks to a prison term of 12 to 32 months but suspended execution of the sentence, placing Sparks on probation for a time period not to exceed 3 years.

On November 3, 2003, the Division of Parole and Probation filed a notice of intent to seek revocation of probation. At the probation revocation proceeding, Sparks admitted to violating his probation by committing the criminal offense of possessing methamphetamine. On March 19, 2004, the district court entered an amended judgment of conviction, ordering: "probation modified to include one year in Clark County Detention Center with 92 days credit for time served at the expiration of which, he shall receive a dishonorable discharge." Thereafter, Sparks was released from custody and placed on house arrest.

On May 5, 2004, the Division of Parole and Probation filed a second notice of intent to seek revocation of probation. At the probation revocation hearing, a police officer testified that Sparks had violated his

probation by absconding from house arrest, using methamphetamine, stealing a vehicle, and evading arrest. After hearing arguments from counsel, the district court entered an order revoking Sparks' probation and imposing the underlying sentence of 12 to 32 months. Sparks filed this timely appeal.

Sparks' sole contention is that the district court erred in entering the order revoking his probation because he had previously been discharged from probation. Specifically, citing to NRS 176A.400(4),<sup>1</sup> Sparks argues that the amended judgment of conviction, entered on March 19, 2004, amounted to a "de facto revocation of probation" because the court defined the modified probation in such a manner that Sparks had no additional contact with the Division of Parole and Probation. We conclude that Sparks' contention lacks merit.

The district court has broad discretion with respect to probation revocation determinations.<sup>2</sup> Where a defendant violates a condition of probation, the district court may modify or extend the probation in whole or in part and cause all or part of the original sentence to be executed.<sup>3</sup> Moreover, this court has held that "a short term of incarceration imposed as a condition of probation" is an acceptable sentencing alternative available to the district court.<sup>4</sup>

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<sup>1</sup>NRS 176A.400(4) provides that: "In placing any defendant on probation or in granting a defendant a suspended sentence, the court shall direct that he be placed under the supervision of the Chief Parole and Probation Officer."

<sup>2</sup>Hylar v. State, 98 Nev. 47, 639 P.2d 560 (1982).


<sup>3</sup>NRS 211A.127(1).


<sup>4</sup>Creps v. State, 94 Nev. 351, 363, 581 P. 2d 842, 851 (1978).

In this case, the district court did not abuse its discretion with respect to the March 2004 order that expressly modified Sparks' probation. The district court had authority to modify the term of probation to impose a one-year prison term. Moreover, because the district court never discharged Sparks from probation, he was still a probationer under the supervision of the Division of Parole and Probation when he was in custody and on house arrest during the one-year time period. Accordingly, we conclude that the March 2004 order was not tantamount to a "de facto revocation of probation."

Having considered Sparks' contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Lee A. Gates, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk