

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL HAYS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43669

FILED

FEB 03 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 appellant's probation. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On September 1, 1999, appellant Michael Hays was convicted, pursuant to a guilty plea, of one count of child abuse and neglect with substantial mental injury.¹ The district court sentenced Hays to a prison term of 43 to 192 months, but then suspended execution of the sentence and placed him on probation for a time period not to exceed 5 years. Hays did not file a direct appeal.

On February 1, 2001, the Division of Parole and Probation filed a violation report against Hays. In the report, the Division alleged that Hays violated the conditions of his probation by failing to pay fees owed to the prosecuting attorney in the State of Washington. After conducting a hearing on the violation report, the district court decided not to revoke Hays' probation.

¹Hays was originally charged with two counts of sexual assault upon his four-year-old daughter.

On August 22, 2002, the Division filed another violation report against Hays. In the report, the Division alleged that Hays violated conditions of his probation by: (1) committing the misdemeanor offenses of working without a work card and failing to register as an ex-felon; (2) accepting employment without the approval of the Division; and (3) working as an ice cream truck driver because the business catered primarily to children and allowed him contact with minors in an unsupervised environment. On December 19, 2002, the district court conducted a probation revocation proceeding and, again, decided not to revoke Hays' probation.

On February 2, 2004, the Division filed a third violation report against Hays. In the report, the Division alleged that Hays violated his probation by being arrested for the criminal offense of aggravated stalking. At the probation revocation hearing, Hays' estranged wife described how he repeatedly sent her text messages on her cellular phone and threatened her. Hays' wife also testified that she was afraid that Hays was going to kill her and take her children. Additionally, a police officer testified that Hays contacted her on several occasions and asked the officer to locate his wife. The officer described how, on one occasion, Hays became irate, and was "screaming, hollering, cursing at me demanding [she] present him his wife." After hearing arguments from counsel, the district court revoked the term of probation, expressly finding that there was sufficient probable cause that Hays committed aggravated stalking.

Hays first argues that his constitutional right to due process was violated because he received inadequate notice of the allegations

against him. While acknowledging that he received written notice of the alleged probation violation, Hays argues that the notice was insufficient because it did not identify the specific instances of misconduct described by the witnesses. We conclude that Hays' contention lacks merit.

Preliminarily, we note that Hays failed to preserve this issue for appeal because he did not object at the probation revocation proceeding on the grounds that his right to due process was violated. The failure to raise an objection with the district court generally precludes appellate consideration of an issue.² This court may nevertheless address an alleged error if it was plain and affected the appellant's substantial rights.³ We conclude that no plain error occurred here.

"Parole and probation revocations are not criminal prosecutions; the full panoply of constitutional protections afforded a criminal defendant does not apply."⁴ However, in discussing the minimum due process requirements for probation revocation proceedings, the United States Supreme Court has recognized that written notice of the alleged probation violation is required.⁵

²See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997).

³See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

⁴Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980).

⁵See Gagnon v. Scarpelli, 411 U.S. 778, 786 (1973); Morrissey v. Brewer, 408 U.S. 471, 489 (1972).

Prior to the revocation hearing, Hays was provided with a written report describing the violation alleged as follows:

Rule # 8 - Laws and Conduct: On January 29, 2004, Michael Hays was arrested by the Las Vegas Metropolitan Police Department and charged with aggravated Stalking (F).

Because the written report provided adequate notice of the alleged probation violation, we conclude that Hays was afforded sufficient due process.⁶

Hays next argues that the district court erred in revoking his probation because it failed to issue a written statement identifying the reasons for revocation and the evidence relied on in support of its ruling. We disagree. At the revocation hearing, the district court made express oral findings, stating that there was probable cause that Hays committed aggravated stalking. Additionally, the district court entered a written order revoking probation, stating that it had "heard the testimony and found that that [Hays] had violated the terms and conditions of his probation." We conclude that the district court's findings were adequate and, therefore, Hays has failed to show that the district court erred.⁷

⁶We note that the written report alleged only one violation. The other instances of conduct, namely prior arrests and an ongoing child custody case, were discussed in the violation report in a narrative section under the heading: "Response to Probation."

⁷To the extent that Hays argues that there was insufficient evidence supporting the decision to revoke probation, we disagree. The testimony of the victim and the police officer supported the district court's finding that Hays violated a condition of his probation by committing the offense of aggravated stalking. See Lewis v. State, 90 Nev. 436, 529 P.2d 796

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Finally, Hays argues that the district court erred in considering testimony about specific instances of conduct not relevant to the alleged violation, including the circumstances surrounding Hays' prior arrests and convictions, as well as testimony referencing the contentious child custody case between Hays and his wife. We conclude that Hays' argument lacks merit.

This court has recognized the "dual nature" of a probation revocation determination: the district court first determines whether the probation violation has been proved and then considers "other relevant factors" in determining whether to revoke probation.⁸ Likewise, this court has held that the district court may, at a probation revocation hearing, inquire whether a probationer has fulfilled specific conditions of his probation regardless of whether those conditions were noticed in the violation report.⁹

We conclude that the district court did not err in considering testimony describing Hays' prior criminal history and his tumultuous personal relationships. Those factors were relevant in determining whether to revoke Hays' probation. Accordingly, the district court did not err or abuse its discretion in revoking Hays' probation.

... continued


(1974) (evidence supporting a decision to revoke probation must merely be sufficient to reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation).


⁸See Jaeger v. State, 113 Nev. 1275, 1285, 948 P.2d 1185, 1191 (1997) (Shearing, C.J., concurring) (citing Morrissey, 408 U.S. at 479-80).

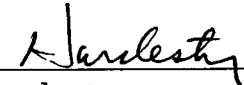
⁹See id. at 1283-84, 948 P.2d at 1190.

Having considered Hays' contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jackie Glass, 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