

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE KALOSHI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44785

FILED

APR 01 2005

ORDER OF REVERSAL AND REMAND BY *J. Richards*  
JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
CHIEF DEPUTY CLERK

This is an appeal from a district court order revoking appellant's probation. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On January 18, 2001, appellant Bruce Kaloshi was convicted, pursuant to a jury verdict, of one count of conspiracy to cheat at gaming. The district court sentenced Kaloshi to a prison term of 12 to 32 months, but then suspended execution of the sentence and placed Kaloshi on probation for a time period not to exceed 2 years. Kaloshi appealed, and the district court stayed the execution of the order imposing probation pending the outcome of the direct appeal. Thereafter, this court affirmed the judgment of conviction.<sup>1</sup> On May 28, 2003, the district court lifted the stay and Kaloshi was admitted to probation.

On October 12, 2004, the State filed a violation report against Kaloshi, alleging that he violated the conditions of his probation by: (1) failing to report, (2) entering a gaming establishment, (3) gambling, and (4) being arrested for cheating at gambling and conspiracy to cheat at gambling. On February 15, 2005, the district court conducted a probation

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<sup>1</sup>Kaloshi v. State, Docket No. 37469 (Order of Affirmance, October 8, 2002).

revocation proceeding. At the proceeding, counsel for Kaloshi requested that the district court schedule an evidentiary hearing pursuant to Anaya v. State<sup>2</sup> so that he could present evidence in support of his contention that his probation should not be revoked. The district court denied Kaloshi's request for an Anaya hearing and revoked his probation. Kaloshi filed this timely appeal.

Kaloshi contends that the district court erred in revoking his probation without conducting an Anaya hearing. The State concedes error, noting that an Anaya hearing was necessary to comport with due process.

Probation revocation is "not [a] criminal prosecution[]; the full panoply of constitutional protections afforded a criminal defendant does not apply."<sup>3</sup> However, due process requires that the probation revocation determination be made upon "verified facts."<sup>4</sup> To ensure that this requirement is met, a probationer is entitled to a preliminary inquiry to determine whether there is probable cause to believe that the terms of probation have been violated.<sup>5</sup> If probable cause is found and the probationer contests the violations alleged, a probationer is entitled to a formal revocation hearing to determine whether revocation is warranted.<sup>6</sup>

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<sup>2</sup>96 Nev. 119, 122, 606 P.2d 156, 157 (1980); see also Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973); Morrissey v. Brewer, 408 U.S. 471, 484-89 (1972).

<sup>3</sup>Anaya, 96 Nev. at 122, 606 P.2d at 157.


<sup>4</sup>Id. (quoting Morrissey, 408 U.S. at 484).


<sup>5</sup>Id. at 122, 606 P.2d at 158.


<sup>6</sup>Id.

In this case, the district court rejected Kolashi's request for a formal revocation hearing. We agree with the parties that in instances, like this one, where the probationer contests the alleged violations and makes a timely request for an Anaya hearing, due process requires that an evidentiary hearing be conducted.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>8</sup>

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

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

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

cc: Hon. Steven R. Kosach, District Judge  
Richard F. Cornell  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>7</sup>We reject Kaloshi's contention that this case be remanded to a different district court judge because there is no indication that the district court considered palpable evidence outside of the record. Cf. Brake v. State, 113 Nev. 579, 939 P.2d 1029 (1997).

<sup>8</sup>On March 18, 2005, Kaloshi filed an emergency motion for bail pending appeal. The State filed a response to the motion. In light of our disposition in this case, we deny the motion as moot.