

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANGELO VIDAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45156

FILED

OCT 24 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; Donald M. Mosley, Judge.

On February 18, 2003, appellant Michael Angelo Vidal was convicted, pursuant to a guilty plea, of one count of grand larceny of a motor vehicle. The district court sentenced Vidal to serve a prison term of 12 to 48 months. It then suspended execution of the sentence and placed Vidal on probation for a period not to exceed three years. Vidal did not file a direct appeal.

On March 3, 2005, the State filed a notice of intent to seek revocation of probation. The district court subsequently conducted a probation revocation hearing, during which the following colloquy occurred:

THE COURT: You were sentenced on February 6, 2003 to 48 months in prison, eligibility for parole after 12 months. You were given probation; required to do community service.

You have been doing so up until January and February of this year.

You were admonished to join gamblers counseling. You have done so to some extent at this point, although your probation officer had to struggle to get you enrolled in that.

He also told you to begin your petty larceny counseling. At this point it's not been done.

You were admonished to maintain full-time residence. In the last 12 months you've lived [in] eight different places.

You admitted using marijuana on April 23, 2003. You tested – admitted using methamphetamine on January 27 of 2004, and either admitted or tested positive for methamphetamine on May 23, 2004.

You were referred to outpatient drug counseling but failed to attend.

Are all of these things essentially true?

DEFENDANT VIDAL: No, Your Honor.

MS. LYNCH [Vidal's counsel]: Yes.

DEFENDANT VIDAL: Essentially, yes.

THE COURT: I accept your stipulation.

After listening to Vidal's explanations and hearing arguments from counsel, the district court revoked Vidal's probation. This appeal follows.

Vidal claims the district abused its discretion by revoking his probation for not completing substance abuse and petit larceny counseling. Vidal contends that he was never informed that he had to complete these conditions by a certain date and that he had sufficient time left on his probation to fulfill these conditions. And Vidal argues that this revocation resulted in cruel and unusual punishment. We disagree.

The decision to revoke probation is within the broad discretion of the district court, and will not be disturbed absent a clear showing of abuse.¹ 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.² Here, as evidenced by Vidal's stipulation, the district court did not err in finding that Vidal's conduct was not as good as required.

Moreover, the revocation of Vidal's probation did not result in cruel and unusual punishment. "The revocation of probation is not 'punishment'" within the context of the constitutional proscription against cruel and unusual punishment.³ Vidal's punishment was the 12 to 48 month prison term the district court imposed at sentencing.⁴ Because Vidal did not challenge the constitutionality of his punishment in a direct appeal he has waived this issue.⁵

¹Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974).

²Id.

³See People v. Hawkins, 119 Cal. Rptr. 54, 60 (Ct. App. 1975).

⁴See NRS 205.228(3) (where the value of the motor vehicle is \$2,500 or greater, grand larceny of a motor vehicle is a category B felony punishable by a prison term of 1 to 10 years).

⁵See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

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

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Rose, J.
Rose

Parraguirre, J.
Parraguirre

cc: Hon. Donald M. Mosley, 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