

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICIA GRUDA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46204

**FILED**

**MAR 16 2006**

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court revoking appellant's probation. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge. Appellant Patricia Gruda was sentenced to a prison term of 12-30 months for possession of a schedule I controlled substance for the purpose of sale.

Gruda's sole contention on appeal is that the revocation of her probation was cruel and unusual punishment. We disagree.

On December 13, 2003, the district court suspended the proceedings and placed Gruda in a diversion program.<sup>1</sup> June 14, 2004, Gruda admitted to violating the terms of her diversion program. The court gave her another opportunity to continue her supervision with additional conditions. Again, Gruda failed to abide by the conditions of her supervision and on May 2, 2005, rather than revoke her probation, the court again modified her supervision to include her participation in a substance abuse program. Again, Gruda failed to abide by the terms of her diversion program and on June 6, 2005, the court entered judgment

---

<sup>1</sup>NRS 458.300.



and suspended the sentence placing Gruda on formal probation. On September 19, 2005, Gruda was found to have been violating her probation and her probation was revoked.

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.<sup>2</sup> 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.<sup>3</sup>

"The revocation of probation is not 'punishment'" within the context of the constitutional proscription against cruel and unusual punishment.<sup>4</sup> Gruda's punishment was the 12-30 month prison term the district court imposed at sentencing.<sup>5</sup> Because Gruda did not challenge the constitutionality of her punishment in a direct appeal she has waived this issue.<sup>6</sup>

---

<sup>2</sup>Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974).

<sup>3</sup>Id.

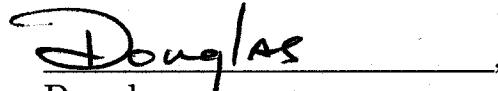
<sup>4</sup>See People v. Hawkins, 119 Cal. Rptr. 54, 60 (Ct.App. 1975).


<sup>5</sup>See NRS 453.337(a) (unlawful for a person to possess any controlled substance classified in schedule I or II, drug possession is a category D felony, punishable by a prison term of 1-4 years.)

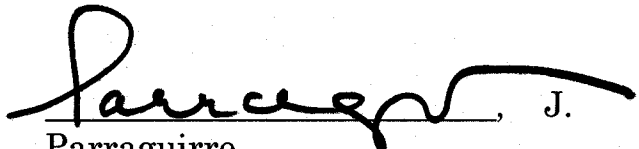
<sup>6</sup>See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Dan L. Papez, District Judge  
State Public Defender/Carson City  
State Public Defender/Ely  
Attorney General George Chanos/Carson City  
White Pine County District Attorney  
White Pine County Clerk