


IN THE SUPREME COURT OF THE STATE OF NEVADA

SHELLEY CIMINI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46451

FILED

SEP 06 2006

BY  JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court revoking appellant Shelley Cimini's probation. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On May 20, 2002, Cimini was convicted, pursuant to an Alford plea,¹ of one count of solicitation to commit murder. The district court sentenced Cimini to a prison term of 24-60 months, suspended execution of the sentence, and placed her on probation for an indeterminate period not to exceed 4 years. Cimini did not pursue a direct appeal from the judgment of conviction and sentence.

On March 1, 2005, the district court conducted a probation revocation hearing. Cimini, among other things, stipulated to writing bad checks and violating the conditions of her probation. Nevertheless, the district court reinstated Cimini's term of probation and ordered her to immediately serve 60 days in jail. On September 27, 2005, the Division of

¹North Carolina v. Alford, 400 U.S. 25 (1970).

Parole and Probation filed another report alleging that Cimini violated the conditions of her probation. The district court conducted a hearing, and on January 3, 2006, entered an order revoking Cimini's probation and imposing the original sentence. This timely appeal followed.

Cimini contends that the district court abused its discretion in revoking her probation. More specifically, Cimini claims that (1) her right to due process was violated by the lack of adequate notice that conduct prior to the previous probation reinstatement could trigger revocation; (2) there was insufficient evidence to revoke her probation; (3) the district court improperly admitted hearsay evidence at the revocation hearing; (4) revoking her probation amounted to cruel and unusual punishment; (5) the district court impermissibly shifted the burden of proof regarding her completion of impulse and stress management counseling; (6) the district court violated *res judicata* and the proscriptions against double jeopardy by punishing her twice for identical conduct; (7) her right to due process was violated if the district court based its decision on her failure to make supervision and restitution payments before she was arrested; and (8) the matter should be remanded for a new probation revocation hearing because the district court failed to make oral and/or written findings. We disagree with Cimini's contention.

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.² 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.³

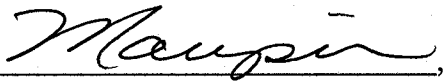
In the instant case, Cimini is unable to demonstrate that the district court abused its discretion in revoking her probation. At the probation revocation hearing, Officer Gary Smith, Cimini's supervising probation officer and the author of the instant violation report, testified on behalf of the Division of Parole and Probation. Evidence adduced at the hearing demonstrated that Cimini (1) failed to get permission from the Division prior to changing her residence; (2) was newly charged by way of a criminal complaint with writing bad checks that were not part of the previous violation report and were not the subject of her stipulation during the first probation revocation proceeding; (3) despite warnings from the district court and the Division, did not pay her supervision fees and restitution until after she was already arrested for the probation violations; and (4) failed to provide verification that she attended a counseling program despite her conflicting assurances that she had attended, and despite the Division's repeated requests. Accordingly, based on the above, we conclude that Cimini's conduct was not as good as required by the conditions of her probation and that the district court did not abuse its discretion in revoking her probation.

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

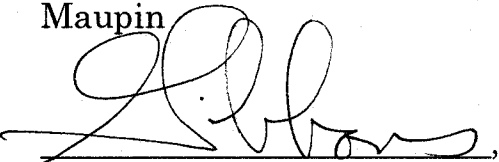
³Id.

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

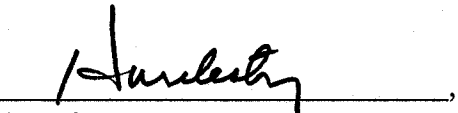
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender Philip J. Kohn
Patricia Erickson
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk