

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID SAUL PUTZER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46614

FILED

JUL 07 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rubaid*
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 October 8, 2004, appellant David Saul Putzer was convicted, pursuant to a guilty plea, of one count of burglary. The district court sentenced Putzer to a prison term of 36 to 96 months, but then suspended execution of the sentence and placed him on probation for a time period not to exceed 5 years. Putzer did not file a direct appeal.

On December 6, 2005, the State filed a notice of intent to seek revocation of probation. After conducting a probation revocation hearing, the district court entered an order revoking Putzer's probation and imposing the original sentence.

Putzer contends that the district court abused its discretion by revoking his probation because he made a good faith effort to satisfy the conditions of his probation. Specifically, Putzer argues that he was

terminated from drug treatment based on a mistaken belief that he stole a jacket. Also, Putzer argues that his probation should not have been revoked as a result of the misdemeanor conviction he received while on probation because the conviction was not yet final. We conclude that Putzer's contention lacks merit.

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 In this case, the district court acted within its broad discretion in revoking probation because Putzer stipulated to the violations alleged by the State; more specifically, he admitted that he was discharged from the drug treatment program and failed to report to his probation officer. Putzer also admitted that he had been convicted, after a bench trial, of a new misdemeanor petit larceny charge. Because Putzer admitted that he violated the conditions of his probation, we conclude that the district court did not abuse its discretion by revoking probation.

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

²Id.

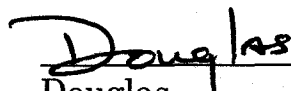
In a related argument, Putzer contends that the district court's decision to revoke his probation amounted to cruel and unusual punishment because he "had made a good faith effort to complete counseling, and had substance abuse rehabilitation program and he had more than sufficient time left on his probation to fulfill this condition." To the extent that Putzer challenges the severity of his sentence, he waived that claim by failing to pursue the matter in a direct appeal from the original judgment of conviction.³ Although the district court's order is entitled, "Order for Revocation of Probation and Amended Judgment of Conviction," the order does not, in fact, amend the judgment of conviction to impose a different sentence, rather it merely revokes Putzer's probation. Nonetheless, after reviewing the record on appeal, we conclude that revocation of probation and the imposition of the original sentence by the district court does not constitute cruel and unusual punishment.⁴

³See 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 in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

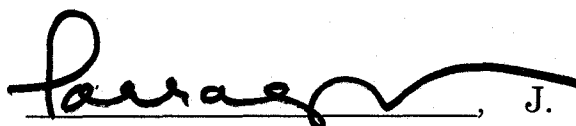
⁴See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (citing Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

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

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk
David Saul Putzer

⁵Because Putzer is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Putzer unfiled all proper person documents that he has submitted to this court in this matter.