

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID WYATT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46998

FILED

JUN 30 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order revoking probation. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On October 16, 1991, appellant David Wyatt was convicted of one count of embezzlement. The district court sentenced Wyatt to serve a prison term of four years and ordered him to pay a \$1,000.00 fine. It further ordered the sentence suspended and placed Wyatt on probation for a period not to exceed five years. As a condition of his probation, Wyatt was required to pay restitution in the amount of \$4,064.84. Wyatt did not file a direct appeal.

Wyatt absconded shortly after being released on probation. On November 20, 1991, the district court concluded that Wyatt had violated the terms of his probation and entered a bench warrant for his arrest. Fourteen years later that warrant was executed. The district court conducted a probation revocation hearing and subsequently revoked Wyatt's probation and imposed the original sentence. Wyatt presents two issues for our review.

First, Wyatt contends that the district court erred by revoking his probation rather than releasing him from probation. He specifically claims that the district court failed to follow the provisions of NRS 176A.870, which he asserts require his release from probation with a dishonorable discharge. We disagree. Under the facts of this case, we conclude that the district court acted within its discretion when it revoked Wyatt's probation and caused his sentence to be executed.¹

Second, Wyatt contends that the district court erred by revoking his probation without first conducting a hearing to determine whether his failure to pay restitution was due to economic hardship.² We disagree. Our review of the record reveals that Wyatt's probation was revoked as a result of a number of violations, and not just his failure to pay restitution. Moreover, nothing in the record indicates that Wyatt's failure to pay restitution was due to economic hardship or that he presented this argument to the district court.³

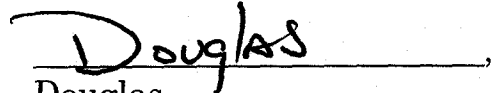
¹See NRS 176A.630; Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974) (holding that the decision to revoke probation is within the broad discretion of the district court, and will not be disturbed absent a clear showing of abuse).

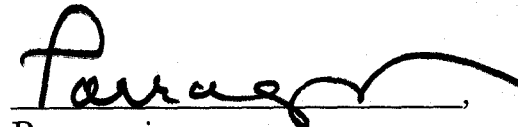
²See NRS 176A.430(4).

³See McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998) ("Where a defendant fails to present an argument below and the district court has not considered its merit, we will not consider it on appeal.").

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

ORDER the judgment of the district court AFFIRMED.⁴

 J.
Douglas

 J.
Parraguirre

 Sr. J.
Shearing

cc: Hon. Jerome Polaha, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁴The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under general orders of assignment entered January 6, 2006.