

IN THE SUPREME COURT OF THE STATE OF NEVADA

ENRIQUE GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47792

FILED

DEC 11 2006

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. Second Judicial District Court, Washoe County; Norman C. Robison, Senior Judge.

On September 16, 2004, appellant Enrique Garcia was convicted, pursuant to a guilty plea, of one count of burglary. The district court sentenced Garcia to serve a prison term of 12 to 30 months, but suspended execution of the sentence and placed Garcia on probation for an indeterminate period not to exceed 36 months.

On June 29, 2006, the district court conducted a probation revocation hearing. At the hearing, Garcia admitted to violating the terms of his probation. The district court accepted Garcia's admission and revoked his probation.

Garcia contends that the district court abused its discretion in revoking probation. Specifically, Garcia contends that the district court made its decision to revoke probation without providing Garcia with an opportunity to make a statement and without considering the factual circumstances which would warrant revocation. Additionally, citing to this court's recent decision in Ruvalcaba v. State,¹ Garcia alleges that the

¹122 Nev. ___, 143 P.3d 468 (2006).

district court revoked his probation based on his status as a foreign citizen. In support of his allegation, Garcia notes that, at the sentencing hearing in another case occurring immediately after the probation revocation hearing, the district court commented:

Now, I want to go back to your record. You were deported after committing robbery and you came back here, and you have committed at least three felonies we know of since you have been back here. I am at a little bit of a loss to understand how you got probation on the first charge here, other than possibly you [provided] substantial assistance to the district attorney or something. Because with your history it, probation was a gift. But you wanted to come back here, you committed these crimes, so you are going to be spending some time with us.

(Emphasis added.) We conclude that Garcia's contentions lack 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.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 this case, the district court acted within its broad discretion in revoking probation. The district court provided Garcia with an opportunity to be heard with respect to the probation violation allegations. At the probation revocation hearing, Garcia stipulated to numerous violations alleged by the State, including violation of rules involving reporting, residence, employment, controlled substance, weapons,

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

³Id.

cooperation, and laws and conduct. Before revoking probation, the district court directly asked Garcia if he understood the stipulation and inquired whether the parties had "anything else on the revocation." When the district court informed defense counsel that the State was recommending revocation, he stated: "That's correct, your honor. I think the battle will be concurrent or consecutive time."

Moreover we disagree that the district court revoked probation based on Garcia's foreign citizenship. The allegedly improper comments were made at a different proceeding after Garcia's probation had been revoked. The district court's comments, assuming they were relevant to the ruling on probation revocation, focused on Garcia's prior criminal history which included three prior felonies, not his status as a foreign citizen. Accordingly, the district court did not abuse its discretion by revoking probation.

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

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Chief Judge, Second Judicial District
Hon. Norman C. Robison, Senior Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk