

IN THE SUPREME COURT OF THE STATE OF NEVADA

WAYNE SIMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48150

FILED

JAN 09 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order revoking probation. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On March 14, 2005, appellant Wayne Sims was convicted, pursuant to a guilty plea, of one count of attempted lewdness with a child under 14 years of age. The district court sentenced Sims to a prison term of 60 to 180 months, but then suspended execution of the sentence and placed Sims on probation for a time period not to exceed 5 years. Subsequently, the State filed a notice of intent to seek revocation of probation. After conducting a hearing, the district court revoked Sims' probation.

Sims contends that his due process rights were violated because the district court revoked his probation without hearing evidence and testimony and without providing Sims with an opportunity to be heard. We disagree.

The district court has broad discretion with respect to probation revocation, and its ruling need only be supported by evidence

that the probationer's conduct has not been as good as required by the conditions of probation.¹ However, "[d]ue process requires, at a minimum, that a revocation be based upon 'verified facts' so that 'the exercise of discretion will be informed by an accurate knowledge of the [probationer's] behavior.'"²

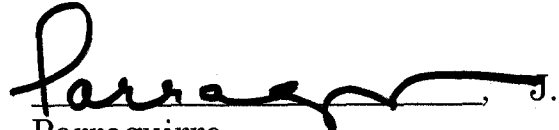
Prior to revoking probation, the district court afforded Sims with an opportunity to be heard on the probation violation allegation. At the beginning of the hearing, the district court asked if Sims was stipulating to the violation, explaining "[i]f you're not, that's fine." Defense counsel for Sims then stipulated to the probation violation, admitting that Sims was convicted of a felony in California for failing to register as a sex offender. Defense counsel also presented argument in mitigation of the probation violation. Defense counsel explained that Sims' conviction for failure to register as a sex offender arose from a technical violation of the rules of probation when Sims failed to make a timely return on a travel pass issued by his probation officer. Despite defense counsel's argument, the district court revoked probation based on verified facts in the record, namely, Sims' admission that he had been convicted of a new felony while on probation. Accordingly, we conclude that Sims' due process rights were not violated at the probation revocation hearing.

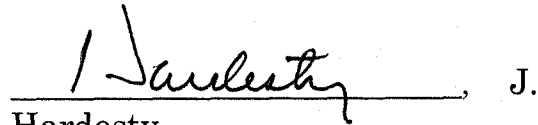
¹See Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974)

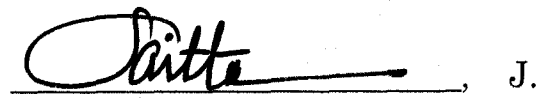
²Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (quoting Morrissey v. Brewer, 408 U.S. 471, 484 (1972)).

Having considered Sims' contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre


Hardesty


Saitta

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk