

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRIN HEIGHTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49252

FILED

SEP 07 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Appellant Darren Heights was convicted, pursuant to a guilty plea, of one count of attempted statutory sexual seduction. The district court sentenced Heights to serve a prison term of 19 to 48 months.¹ It further ordered the sentence to be suspended and placed Heights on probation for a period not to exceed 60 months. Heights did not file a direct appeal.

Heights contends that the district court abused its discretion by sentencing him to a term of probation with a suspended sentence of 19 to 48 months and then later revoking his probation. He specifically claims that these actions constituted cruel and unusual punishment. We disagree.

¹See NRS 193.130(2)(d); NRS 193.330(1)(a)(4); NRS 200.368(1).

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

Here, the district court heard evidence that Heights violated the conditions of his probation by using alcohol and marijuana, failing to report to his probation officer, failing to maintain a job, and having unsupervised contact with his son. Accordingly, the district court did not err in finding that Heights' conduct was not as good as required.

Moreover, the revocation of Heights' probation did not result in cruel and unusual punishment. "The revocation of probation is not 'punishment.'"⁴ Heights' punishment was the original prison term imposed by the district court at sentencing. Because Heights did not challenge the constitutionality of this punishment in a direct appeal, he has waived the issue.⁵

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

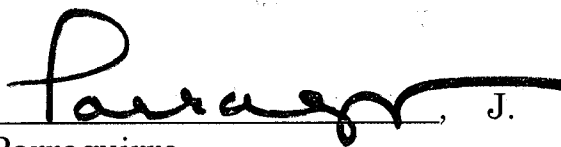
³Id.

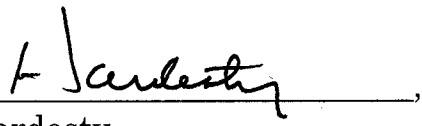
⁴People v. Hawkins, 119 Cal. Rptr. 54, 60 (Ct. App. 1975).

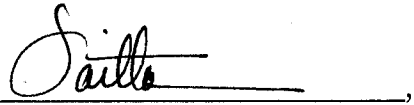
⁵See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

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

ORDER the judgment of the district court AFFIRMED.


Parraguirre, J.


Hardesty, J.


Saitta, J.

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