

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE JAMES HILL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49511

**FILED**

JAN 04 2008

TRACIE K. LINSEMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On June 19, 2006, the district court convicted appellant Eddie James Hill, pursuant to a guilty plea, of one count of coercion with the use of a deadly weapon. The district court sentenced Hill to serve two consecutive prison terms of 12 to 60 months, ordered the sentence to be suspended, and placed Hill on probation for a period not to exceed three years. Hill did not file a direct appeal.

On April 2, 2007, the State filed a notice of intent to seek revocation of probation. The district court subsequently conducted a probation revocation hearing, during which the following colloquy occurred:

THE COURT: You were given probation. You were referred to the Help Center on the 11th of July, 2006, and again on the 4th of December of 2006, and no community service has shown to have been completed.

You were also referred to acquire a GED and go to impulse control on the 11th of July, 2006, and various times thereafter, but no proof of performance of either of those programs is forthcoming, either the GED or impulse control.

You last appeared at your probation officer's office the 4th December of 2006. Thereafter, you were declared to be an absconder.

You are \$180 in arrears on your supervision fees.

You failed to appear for your appointment on the 8th of January, 2007, and you were not heard from thereafter until you had a traffic stop on the 4th of March of this year, at which time you were arrested on the warrant. Are these things true?

THE DEFENDANT: Yes, sir.

THE COURT: I accept your stipulation.

After listening to Hill's explanations and hearing arguments from counsel, the district court revoked Hill's probation. This appeal follows.

Hill contends that the district court abused its discretion by revoking his probation "for not completing his impulse control counseling, not completing any community service, and for not acquiring his GED." Hill claims that he had more than sufficient time left on his probation to fulfill these conditions, he was never informed that these conditions had to be completed by a certain date, and his probation was revoked after only nine months. And Hill argues that this revocation resulted in cruel and unusual punishment. We disagree.

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.<sup>1</sup> 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.<sup>2</sup> Here, as evidenced by Hill's stipulation, the district court did not err in finding that Hill's conduct was not as good as required.

Moreover, the revocation of Hill's probation did not result in cruel and unusual punishment. "The revocation of probation is not 'punishment'" within the context of the constitutional proscription against cruel and unusual punishment.<sup>3</sup> Hill's punishment was the two consecutive prison terms of 12 to 60 months that the district court imposed at sentencing.<sup>4</sup> Because Hill did not challenge the constitutionality of his punishment in a direct appeal he has waived this issue.<sup>5</sup>

---

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

<sup>2</sup>Id.

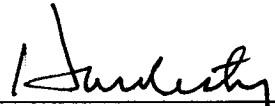
<sup>3</sup>See People v. Hawkins, 119 Cal. Rptr. 54, 60 (Ct. App. 1975).

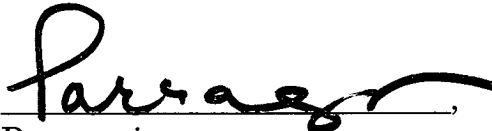
<sup>4</sup>See NRS 207.190(2)(a) (coercion with the use or threat of physical force is punishable by prison term of 1 to 6 years); NRS 193.165(1) (the use of a deadly weapon to commit a crime is punishable by a prison term equal and in addition to the prison term prescribed for the crime committed).

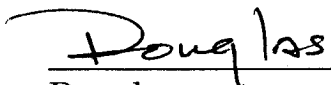
<sup>5</sup>See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222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

Having considered Hill's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Donald M. Mosley, 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