

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEROY PACHECO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49781

**FILED**

NOV 13 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking appellant's probation. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On May 8, 2006, the district court convicted appellant Michael Leroy Pacheco, pursuant to a guilty plea, of one count of attempted murder. The district court sentenced Pacheco to a prison term of 24 to 60 months, and then suspended execution of the sentence and placed Pacheco on probation for a time period not to exceed 5 years.

On April 30, 2007, the Division of Parole and Probation filed a probation violation report against Pacheco. The district court conducted probation revocation proceedings on May 17 and May 31, 2007, and on June 4, 2007, entered an order revoking probation and awarding Pacheco credit for 220 days time served. Pacheco filed this timely appeal.

Pacheco contends that the district court abused its discretion in revoking his probation. In particular, Pacheco contends that the district court erred by failing to: (1) grant defense counsel's request to continue the probation revocation proceedings; (2) ensure that Pacheco knowingly and voluntarily waived his right to a formal probation hearing; (3) elicit a formal stipulation from Pacheco that the probation violations

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alleged were true; and (4) make an express finding that Pacheco violated the conditions of his probation. We conclude that Pacheco's contentions lack merit.

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.<sup>1</sup> 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.'"<sup>2</sup>

In the instant case, Pacheco is unable to demonstrate that the district court abused its discretion in refusing to continue the proceedings and revoking his probation. The revocation determination was based on verified facts. In particular, the probation officer advised the district court that Pacheco "does not want to go to counseling, continues to use meth and marijuana. And his residence [was] 'iffy.'" Further, at the probation revocation proceedings, Pacheco never requested a more formal hearing, offered evidence, or contested the allegations that he violated the terms of his probation. In fact, the district court asked Pacheco, "[a]nd you have lots of responsibilities, and you didn't live up to those responsibilities." Pacheco responded, "[r]ight." Finally, at the second probation revocation proceeding, Pacheco advised the district court that he wanted to proceed

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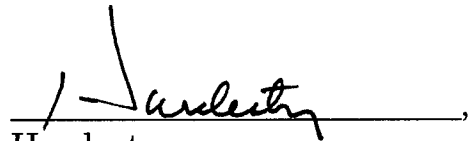
<sup>1</sup>See Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974)

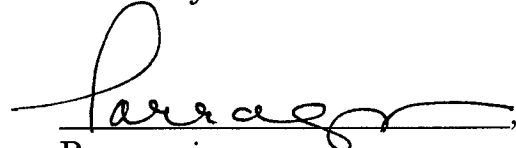
<sup>2</sup>Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (quoting Morrissey v. Brewer, 408 U.S. 471, 484 (1972)).

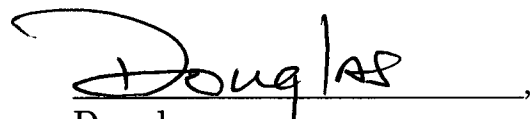
with the probation revocation hearing. Accordingly, we conclude that Pacheco's conduct was not as good as required by the conditions of his probation, and that the district court acted within its discretion when it revoked his probation.<sup>3</sup>

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

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Connie J. Steinheimer, District Judge  
Washoe County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>3</sup>See generally McNallen v. State, 91 Nev. 592, 540 P.2d 121 (1975) (revocation of probation affirmed where violation by probationer not refuted).