

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MISSELDINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50933

FILED

SEP 11 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order revoking probation and second amended judgment of conviction. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant John Misseldine entered an Alford¹ plea to one count of attempted lewdness with a child under the age of fourteen and one count of coercion. In October 2005, the district court convicted Misseldine of coercion and sentenced him to a prison term of 24-60 months and ordered him to pay \$6,220.80 in restitution. The court suspended the prison sentence and placed Misseldine on probation for a fixed term of five years. The district court stayed adjudication of the lewdness count pending Misseldine's successful completion of probation. The court admonished Misseldine that, "probation in this Court is a one time offer and if Defendant violates probation, he will be revoked on the original sentence." Misseldine did not file a direct appeal.

Two years later, in October 2007, the State filed a notice of intent to seek revocation of the probation, alleging that Misseldine failed

¹North Carolina v. Alford, 400 U.S. 25 (1970).

to complete the terms of his probation, including sexual offender counseling and sixteen hours of monthly community service work. After conducting a hearing, the district court revoked Misseldine's probation. Misseldine moved to reconsider. The district court held a second hearing on the motion for reconsideration and on sentencing as to the lewdness count. Thereafter, the district court denied the motion for rehearing, and entered an order and second amended judgment of conviction that revoked probation on the coercion count, reinstated the original sentence, convicted appellant of the lewdness count, and imposed a concurrent prison term of 24-72 months on the lewdness count. This timely appeal followed.

Misseldine contends that the district court abused its discretion in revoking probation. Misseldine argues that he had made substantial progress toward completing the conditions of probation and that he had three years of probation remaining in which to complete the counseling and community service requirements. Misseldine further argues that he maintained other conditions of probation including paying restitution, maintaining employment, and complying with home visits.

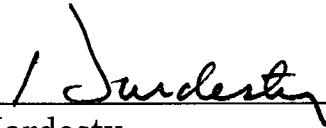
The decision to revoke probation is within the broad discretion of the district court and will not be disturbed absent a clear showing of abuse.² Evidence supporting a decision to revoke probation must merely be sufficient to reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation.³

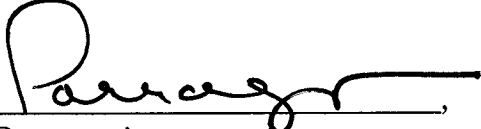
²Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974).

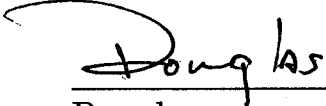
³Id.

We conclude that the district court did not abuse its discretion in finding that Misseldine's conduct was not as good as required by the conditions of probation and revoking his probation. In particular, Misseldine's probation officer testified that he failed to attend thirty-three out of fifty-six counseling sessions, and that he later changed counselors without prior approval. Further, Misseldine could produce proof of completing only four hours of community service, falling far short of the sixteen hours of monthly community service required of him since February 2006. While Misseldine claimed to have performed some community service at his church, he failed to obtain approval from his probation officer or provide proper verification of the completed service. Thus, even though Misseldine had three years of his probation term remaining, his conduct during the first two years did not meet the conditions of probation and was proper grounds for revocation. Accordingly, we

ORDER the order revoking probation and second amended judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Robert M. Draskovich, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk