

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER DUSTIN RHODES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51402

**FILED**

FEB 11 2009

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court revoking probation and amending the judgment of conviction. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On July 16, 2007, the district court convicted appellant Peter Dustin Rhodes, pursuant to a guilty plea, of one count of attempting to obtain and/or use the personal identification information of another. The district court sentenced Rhodes to a prison term of 16 to 72 months, suspended execution of the sentence, and placed Rhodes on probation for a period not to exceed 36 months. We affirmed the judgment of conviction on direct appeal. Rhodes v. State, Docket No. 50022 (Order of Affirmance, January 4, 2008).

On March 14, 2008, following a hearing on Rhodes' motion to modify his sentence and the State's motion for revocation of probation, the district court denied Rhodes' motion, revoked his probation, and imposed the original sentence with credit for time served. This appeal followed.

First, Rhodes contends that the district court abused its discretion by denying his motion to modify his sentence. Rhodes claims that his motion was based "upon newly discovered evidence, and upon

clarification of what [he] meant when he said he would make restitution.” Rhodes asserts that the district court refused to consider the information presented in support of his motion and based its decision to deny the motion on the doctrine of law of the case. Rhodes argues that this court’s order of affirmance does not constitute law of the case because it addressed restitution as a condition of probation whereas his motion for reconsideration addressed restitution as part of the sentence.

The doctrine of the law of the case provides that “[t]he law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (internal quotation marks and citation omitted). We have held that this doctrine “cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799.

On direct appeal, we observed “that a defendant may be ordered to pay restitution pursuant to NRS 176.033 only for offenses which he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution;” we determined that Rhodes agreed to “make any restitution that [the district court felt was] necessary;” and we held that the district court did not abuse its discretion by ordering Rhodes to pay restitution. See Rhodes v. State, Docket No. 50022 (Order of Affirmance, January 4, 2008). We conclude that the issue presented in Rhodes’ motion to modify his sentence is substantially the same as the issue that we addressed on direct appeal and, therefore, the district court did not abuse its discretion by denying Rhodes’ motion on the basis of the doctrine of the law of the case.

Second, Rhodes contends that the district court abused its discretion by revoking his probation. He specifically claims that “[t]he [district court] violated [his] right to due process and fundamental fairness as required by the Fourteenth Amendment to the United States Constitution by revoking him without a sufficient change to its [sic] penological interests.” In support of his contention, Rhodes cites to Black v. Romano, 471 U.S. 606, 614-15, 620 (1985), and Bearden v. Georgia, 461 U.S. 660, 670 (1983). Both of these cases recognize that “fundamental fairness requires consideration of alternatives to incarceration . . . if the defendant has violated a condition of probation through no fault of his own.” Black, 471 U.S. at 614.

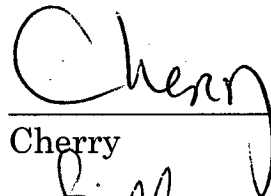
The decision to revoke probation is within the broad discretion of the district court, and will not be disturbed absent a clear showing of abuse. Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). Evidence supporting a decision to revoke probation must merely be sufficient to reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation. Id. 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.’” Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (quoting Morrissey v. Brewer, 408 U.S. 471, 484 (1972)) (alteration in original).

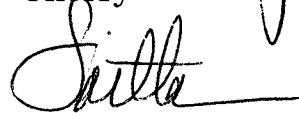
Here, the State alleged that Rhodes violated the conditions of his probation when (1) the police found him in possession of stolen property, burglary tools, drug paraphernalia, a hypodermic device, and methamphetamine; (2) he failed to pay his monthly supervision fees; and (3) he failed to pay his minimum monthly restitution obligation. The

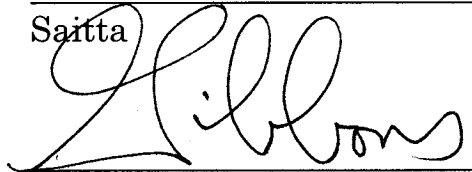
district court conducted a revocation hearing, during which defense counsel stated that Rhodes did not deny the new criminal charges, the district court announced that Rhodes' failure to pay restitution would not be a basis for its revocation decision, and Rhodes was allowed to speak on his own behalf. The district court specifically addressed Rhodes' interest in rehabilitation and concluded that it was outweighed by the communities' right to not have its property stolen. Under these circumstances, Rhodes has failed to demonstrate that the district court's decision to revoke his probation was fundamentally unfair, violated his right to due process, or constituted an abuse of discretion. Accordingly, we conclude that this contention is without merit.

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

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

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