

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANNIAH RANDOLPH PRATT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51923

FILED

FEB 04 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. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On March 28, 2008, the district court convicted appellant Anniah Randolph Pratt, pursuant to a guilty plea, of one count of attempting to carry a concealed firearm or other deadly weapon. The district court sentenced Pratt to a prison term of 19 to 48 months, ordered the sentence to be suspended, and placed Pratt on probation for a period not to exceed five years. Shortly after the district court entered its judgment of conviction, the State filed notice of its intent to seek revocation of Pratt's probation.

On April 29, 2008, the district court conducted a revocation hearing. Initially, the probation officer stated that Pratt had failed to report to the Division of Parole and Probation. However, Pratt provided the district court with slips that indicated he reported to the Division and was turned away. Next, the probation officer provided the district court with a copy of a police report which alleged that Pratt was found with a known gang member, was out after his curfew, and admitted to using

alcohol. No testimony was presented at this hearing and the police report was not authenticated. Defense counsel requested that the police officer be brought in to testify at the revocation hearing regarding the alcohol admission alleged in his report. The district court ordered the State to subpoena the officer and continued the hearing.

On May 27, 2008, the revocation hearing resumed. Defense counsel noted that the police officer who submitted the police report was not present and apparently had not been subpoenaed. Defense counsel stated Pratt would stipulate to being out past curfew in violation of his probation conditions. Defense counsel argued that Pratt did not use alcohol, associate with a known gang member, or pick up any new charges and that Pratt was only facing revocation because the Division did not like him due to its previous experiences with him in other probation cases. The district court ordered Pratt's probation revoked based on his "[v]iolating curfew and being with people who he does not need to be around and drinking alcohol." This appeal followed.

Quoting Anaya v. State, 96 Nev. 119, 123, 606 P.2d 156, 158 (1980), Pratt contends that the district court violated his "due process right to confront and question witnesses giving adverse information at the formal revocation hearing." Pratt claims that he should have been allowed to confront and question the police officer whose report was the sole basis for his revocation. Pratt concedes "that it was his intention to stipulate to conduct that would have been a violation of his probation and that the [district] court had discretion to revoke under those circumstances." And Pratt asserts that his "prayer for relief is based upon basic notions of

fairness which this court has applied to the otherwise procedurally flexible probation revocation hearing.”

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, 96 Nev. at 122, 606 P.2d at 157 (quoting Morrissey v. Brewer, 408 U.S. 471, 484 (1972)) (alteration in original).

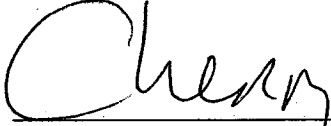
Our review of the record on appeal reveals that the State failed to present any evidence in support of its motion to revoke Pratt’s probation.¹ The police officer who authored the report on Pratt’s alleged probation violations was not present at the continued revocation hearing and, therefore, the district court could not base its revocation decision on the unverified allegations contained in the report. However, during the hearing, Pratt stipulated to the curfew violation. As evidenced by Pratt’s stipulation, the district court did not err in finding that Pratt’s conduct was not as good as required by the conditions of his probation, and we

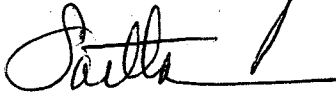
¹The probation officer’s unsworn statements at the probation revocation hearing are neither testimony nor evidence.


conclude that under these circumstances Pratt's due process and confrontation rights were not violated and that the district court did not abuse its discretion by revoking his probation.

Having considered Pratt's contention and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jackie Glass, 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