

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE LEE DUNCAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34697

FILED

JUL 05 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Schach*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order revoking appellant's probation.

On May 6, 1997, the district court convicted appellant, pursuant to a guilty plea, of using and/or being under the influence of a controlled substance. See NRS 453.411. The district court sentenced appellant to 12 to 48 months in prison and then deferred entry of the judgment of conviction to allow appellant to complete a drug diversion rehabilitation program. See NRS 458.330. On September 11, 1998, the district court terminated diversion and placed appellant on probation for a period not to exceed three years. On August 12, 1999, the district court revoked appellant's probation and imposed the underlying sentence. This appeal followed.

First, appellant asserts her guilty plea was invalid because the district court's plea canvass did not establish sufficient facts or illicit sufficient admissions from appellant regarding the crime to which she pleaded guilty. The State correctly argues this court lacks jurisdiction to consider appellant's contention. The district court entered the judgment of conviction on September 11, 1998. Appellant's notice of appeal was filed August 17, 1999, well after the

expiration of the 30 day appeal period. See NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court. See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). Therefore, this court lacks jurisdiction to review appellant's contentions regarding the validity of her guilty plea.

Appellant next contends the district court abused its discretion by arbitrarily and capriciously revoking appellant's probation.¹ We disagree.

The district court's discretion to revoke probation is broad and we will not disturb the district court's decision absent a "clear showing of abuse of that discretion." Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974); see also NRS 176A.630. Evidence supporting a district court's decision to revoke probation must sufficiently demonstrate the probationer's conduct was not "as good as required by the conditions of probation." Lewis, 90 Nev. at 438, 529 P.2d at 797.

The district court terminated appellant's diversion program because she failed drug tests and because she failed to attend counseling sessions. Subsequently, the district court placed appellant on probation for a period not to exceed three years. On August 12, 1999, the district court revoked appellant's probation and imposed the original sentence because she failed drug tests and associated with known felons. Therefore, we conclude the district court did not err. Accordingly, appellant's contention is without merit.

Last, appellant asserts her right to due process, and her right to counsel were violated when her parole officer

¹We note the appeal is timely filed as to the probation revocation issues only.

allegedly coerced her into waiving, without the benefit of counsel, the preliminary violation inquiry prior to the revocation proceeding. See NRS 176A.580. We note appellant failed to object or otherwise raise this issue in the district court. Generally, this court will not review an issue not presented below. State v. Taylor, 114 Nev. 1071, 1077, 968 P.2d 315, 320 (1998). Therefore, we decline to consider this contention.

Having concluded appellant's contentions are without merit, we

ORDER this appeal dismissed.²

Maupin, J.
Maupin

Shearing, J.
Shearing

Becker, J.
Becker

cc: Hon. Steven P. Elliot, District Judge
Attorney General
Washoe County District Attorney
Jack A. Alian
Washoe County Clerk
Susan Southwick, Supreme Court Law Librarian

²On March 23, 2000, this court ordered appellant's attorney, Jack A. Alian, to file and serve a rough draft transcript request form. Mr. Alian failed to respond. On May 18, 2000, we ordered, for the second time, Mr. Alian to file and serve a rough draft request form, and we ordered Mr. Alian to show cause why this court should not impose sanctions for his failure to comply with the prior order. Mr. Alian has failed to show cause. Accordingly, Mr. Alian shall pay the sum of one hundred dollars (\$100.00) to the Supreme Court Law Library and provide the clerk of this court with proof of said payment within twenty (20) days of this order.