

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH MCPHERSON KEMP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52206

FILED

JUN 03 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; Jennifer Togliatti, Judge.

On August 17, 2006, the district court convicted appellant Keith McPherson Kemp, pursuant to an Alford plea, of one count of battery with the use of a deadly weapon resulting in substantial bodily harm. See North Carolina v. Alford, 400 U.S. 25 (1970). The district court sentenced Kemp to a prison term of 35 to 156 months, suspended execution of the sentence, and placed Kemp on probation for a period not to exceed three years. Kemp did not file a direct appeal.

On May 29, 2008, Kemp was arrested for committing a new criminal offense. The State filed notice that it intended to seek revocation of his probation. During the probation revocation hearing, Kemp claimed that his probation had expired before he committed the new offense as a result of good behavior credits he earned pursuant to NRS 176A.500(5), Officer Bill Carlson explained how the Division of Parole and Probation determined good behavior credits, and counsel argued as to how Kemp's good behavior credits should be calculated. The district court determined

that Kemp's probation had not expired before he committed the new offense, revoked his probation, and imposed the original sentence with credit for time served. This timely appeal followed.

Kemp contends that the district court abused its discretion by revoking his probation after his probation period had expired. Kemp specifically claims that he was sentenced on July 31, 2006, and placed on probation for a period not to exceed three years; he was compliant for a pro-rated period of 21.9 months; pursuant to the provisions of NRS 176A.500(5), he was entitled to a 14.6-month deduction from his three-year probation period; and the deduction would have resulted in a probation expiration date of May 18, 2008, which was 11 days before he committed the new offense. In response, the State argues that Kemp has misinterpreted NRS 176A.500(5).

The interpretation of a statute presents a question of law and is subject to de novo review. Firestone v. State, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004). We attribute the plain meaning to a statute that is not ambiguous. Id. A statute is ambiguous when its language "lends itself to two or more reasonable interpretations." State v. Catanio, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).

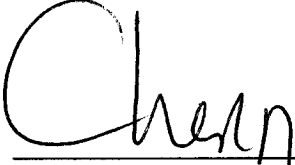
NRS 176A.500(5) provides,

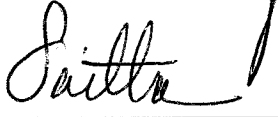
An offender who is sentenced to serve a period of probation for a felony who has no serious infraction of the regulations of the Division, the terms and conditions of his probation or the laws of the State recorded against him, and who performs in a faithful, orderly and peaceable manner the duties assigned to him, must be allowed for the period of his probation a deduction of 20 days from that period for each month he serves.


(Emphasis added.) We conclude that NRS 176A.500(5) is not ambiguous; it plainly provides that a probationer is entitled to a 20-day deduction for each month that he serves, and it does not provide for pro-rata calculation of this deduction.

Kemp served 21 months on probation between July 31, 2006, and May 29, 2008.¹ Assuming that his behavior was good during these months, Kemp was entitled to have 420 days deducted from his probation period (21 x 20 = 420). Kemp's three-year probation period was projected to end on July 31, 2009. Subtracting 420 days from July 31, 2009, results in a probation expiration date of June 6, 2008. Because Kemp committed his new offense on May 29, 2008, his probation had not expired and he was still subject to the conditions of his probation. Accordingly, the district court did not abuse its discretion by revoking Kemp's probation, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

¹We note that NRS 176A.500(5) is applied retroactively to July 1, 2006. See 2007 Nev. Stat., ch. 525, § 21, at 3196.

cc: Hon. Jennifer Togliatti, 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