

IN THE SUPREME COURT OF THE STATE OF NEVADA

CORTEZ CARTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52416

FILED

MAY 05 2009

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 an amended judgment of conviction. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On February 29, 2008, the district court convicted appellant Cortez Carter, pursuant to a guilty plea, of burglary with the assistance of a child (count I), grand larceny with the assistance of a child (count II), and conspiracy to commit larceny (count III). The district court sentenced Carter to serve a prison term of 12 to 36 months plus an equal and consecutive term for the assistance of a child on each count I and II, and to a prison term of 12 months for count III. The district court suspended execution of the sentence and placed Carter on probation for a time period not to exceed three years.

On July 25, 2008, the State filed a notice of intent to seek revocation of probation. At the probation revocation hearing, Carter admitted to violating the conditions of probation and stipulated to revocation. The district court revoked Carter's grant of probation and ordered him to serve the original sentence imposed. This appeal followed.

Carter argues that in revoking his probation, the district court abused its discretion and thereby violated his right to equal protection and

procedural due process. Specifically, he argues that the probation statutes are not uniformly applied because some probationers have their probations revoked after their first violation while others do not. He asserts that, because this was his first violation, the revocation of his probation and imposition of the original sentence was unfair and the district court abused its discretion by not allowing him other options prior to revoking his probation. We disagree.

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. Here, Carter was present and represented by counsel at the revocation hearing. Carter admitted to violating the terms of his probation and stipulated to revocation. Based on these facts, we conclude that the district court acted within its discretion when it revoked Carter's probation.

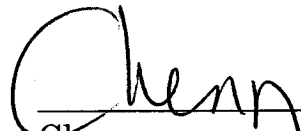
To the extent Carter argues that NRS 176A.630 violates his right to equal protection because it permits the district court to impose varying punishments on probationers who violate the terms of their probation, we conclude that argument is without merit.¹ See Pinana v.

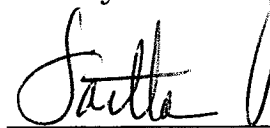
¹NRS 176A.630 provides that upon violation of the terms of probation, the district court may: (1) continue or revoke probation, (2) order the probationer to serve a term of residential confinement, (3) order the probationer to enroll in a regimental discipline program, (4) order the execution of the original sentence, or (5) modify the original sentence.


State, 76 Nev. 274, 284, 352 P.2d 824, 830 (1960) (holding that “[s]tatutes giving courts or juries discretion in the fixing of punishment, with respect both to the nature thereof . . . and to the extent thereof within certain fixed limits are not violative of constitutional equal protection provisions”) receded from on other grounds by In re Application of Shin, 125 Nev. ___, ___ P.3d ___, (Adv. Op. No. 10, March 26, 2009).

Having considered Carter’s claims and concluded that they are without merit, we

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


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Eighth Judicial District Court Dept. 7, District Judge
Albright Stoddard Warnick & Albright
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk