

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKEY T. WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52932

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 of the district court revoking appellant Rickey Williams' probation. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On January 13, 2005, the district court convicted Williams, pursuant to a guilty plea, of one count of failure to notify change of address as a sex offender. The district court sentenced Williams to serve a prison term of 12 to 34 months, and then suspended execution of the sentence and placed Williams on probation for a period not to exceed 60 months.

On September 8, 2008, the Division of Parole and Probation filed a violation report against Williams.¹ On November 13, 2008, the district court conducted a probation revocation proceeding. After hearing

¹The specific allegations contained in the violation report are unknown as no copy of the report is included in the parties' appendix. However, the record indicates that Williams was accused of failing drug tests on three occasions, failing to pay fees and fines, dishonesty, possessing pornography, and associating with persons with criminal histories.

arguments from counsel and Williams, the district court entered an order revoking Williams' probation and executing the sentence originally imposed. This appeal followed.

As a threshold matter, Williams contends that the district court failed to conduct an inquiry to determine if a probation violation occurred and asserts that he did not admit to the alleged violations or otherwise waive this inquiry. Williams further contends that (1) the district court did not have sufficient verified facts to determine whether any of the alleged violations actually occurred, (2) he was denied his right to cross-examine witnesses, and (3) the district court failed to issue written findings. We conclude that these contentions lack merit.

Waiver

A probation revocation proceeding consists of two distinct components: the first to determine whether the alleged violations actually occurred (determination hearing), and the second to decide whether "the facts as determined warrant revocation" (disposition hearing). Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 158 (1980) (quoting Morrissey v. Brewer, 408 U.S. 471, 480 (1972)). A valid waiver of due process rights at a probation revocation hearing requires that a person knowingly and intelligently waive these rights. Anaya, 96 Nev. at 123, 606 P.2d at 158. Alleged errors at revocation proceedings are reviewed for harmless error. U. S. v. Sesma-Hernandez, 253 F.3d 403, 410 (9th Cir. 2001).

Here, it is evident from the following exchange between defense counsel and the district court that Williams waived the determination hearing as to his positive drug test.

The Court: Now, this is the time set for the Anaya hearing on the State's motion to revoke the probation heretofore granted.

Defense counsel: That's correct, your Honor. However, there is one problem. Miss Lewis did not bring the sample bottle for the test in question. So we are unable to proceed with that this morning. I would respectfully ask that either this hearing be continued or that the - - court's indulgence. (Counsel confers with her client.)

The Court: What are you going to do, have it retested?

Defense counsel: There is - - there is a question as to the chain of custody on the sample that was provided, according to Mr. Williams. However, after discussing a possible option with him in the break that we had, which would involve AB510, we are still kind of questioning which way we want to go.

The Court: All right. So netting that out - - what are you asking for?

Defense counsel: Court's indulgence. Mr. Williams indicates that he would rather go straight to argument and not have the sample jar brought down.

The Court: Okay. Was that the only issue that was involved in the Anaya?

Defense counsel: Basically, your Honor.

This dialog indicates that Williams agreed to waive the determination hearing regarding the drug test mentioned therein. Further, it is clear that Williams consulted with his counsel regarding the decision. Thus, we conclude that Williams knowingly and intelligently waived his right to a determination hearing regarding that drug test.

Moreover, Williams' claim that he did not admit to any probation violations is belied by the record. Specifically, in response to the district court's inquiry regarding prohibited associations, Williams stated,

“I have been unfortunate with a couple people that I had to deal with.” Accordingly, we conclude that this claim is without merit.

Sufficiency of evidence

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 satisfy the district court that a probationer’s conduct has not been 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)(second alteration in original)).

Here, Williams has not demonstrated that the district court abused its discretion in revoking his probation. During the hearing, no testimony was taken, nor was any evidence introduced. However, Williams admitted that he associated with various persons with criminal records. Based on this verified fact, we conclude the district court was within its discretion in determining that Williams’ conduct was not as good as required by the conditions of probation.

Right to cross-examination

Williams next complains that he was not permitted to cross-examine his probation officer. As Williams failed to object at the revocation hearing on the grounds that he was denied the right to cross-examine witnesses, we review this claim for plain error. NRS 178.602; Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

A probationer is entitled to question persons giving adverse information at the parole revocation hearing. Anaya, 96 Nev. at 123, 606 P.2d at 158. However, Williams never requested that any witnesses be sworn in, or that he be allowed to cross-examine any witnesses. Thus, Williams has failed to show that the district court committed plain error.

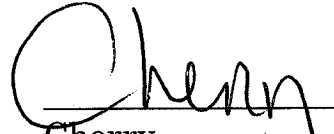
Written findings

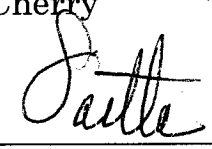
Finally, Williams contends that the district court erred in failing to enter written findings. The Supreme Court has held that the right to due process requires a written statement of the reasons for revoking probation and the evidence relied upon in so doing. Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972). However, an “oral statement of findings made on the record-provided that a written transcript of those findings can be made available--is sufficient to satisfy” this requirement. Sesma-Hernandez, 253 F.3d at 405. In instances where a probationer does not dispute the evidence used to support the alleged violations, “a conclusory statement on the record that the government ha[s] sustained its burden of proving the charges [i]s sufficient, so long as the record contain[s] evidence to support the conclusion that the defendant committed the charged violations.” Id. at 405-06.

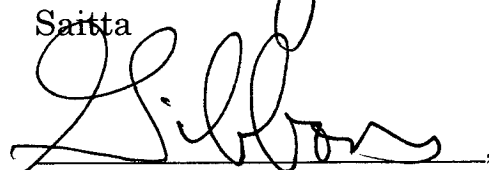
As previously discussed, Williams waived any challenges he had to the validity of the drug test. In addition, Williams admitted associating with persons with criminal histories. Thus, the record contains sufficient evidence to support the conclusion that Williams violated his probation. Accordingly, the district court’s statement that it “finds good cause to revoke” is sufficient to satisfy the requirements of due process.

Having considered Williams' claims and concluded they lack merit, we

ORDER the order revoking probation AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jerome Polaha, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk