

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN NEIL STIRNEMANN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52985

**FILED**

MAY 11 2009  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court revoking appellant Kevin Stirnemann's probation. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On November 21, 2007, the district court convicted Stirnemann, pursuant to a guilty plea, of one count of battery causing substantial harm. The district court sentenced Stirnemann to serve a prison term of 12 to 32 months, and then suspended execution of the sentence and placed Stirnemann on probation for a period not to exceed 24 months.

On November 17, 2008, the Division of Parole and Probation filed a violation report against Stirnemann, alleging that he violated two conditions of his probation. Specifically, the Division contended that Stirnemann: (1) lied to the Division about paying his court fees, and (2) failed to make a single payment towards his court ordered restitution. On December 4, 2008, the Division filed a supplemental violation report alleging that Stirnemann was involved in an altercation at a bar and had been drinking alcohol.

On December 5, 2008, the district court conducted a probation revocation proceeding. After hearing arguments from counsel, the district court entered an order revoking Stirnemann's probation and executing the sentence originally imposed. Stirnemann filed this timely appeal.

Stirnemann contends that the district court abused its discretion in revoking his probation. Specifically, Stirnemann asserts that his right to due process was violated because the district court did not allow him to speak at the probation revocation hearing. Because Stirnemann failed to object at the hearing on the grounds that his right to due process was violated, we review this claim for plain error. NRS 178.602; Leonard v. State, 117 Nev. 53, 63, 17 P.3d 397, 403-04 (2001).

Due process requires that a probationer be given an opportunity to appear and speak on his own behalf at a probation revocation hearing. See Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 158 (1980); NRS 176A.600(2)(a). Here, Stirnemann's counsel addressed the district court on Stirnemann's behalf, offering explanations in mitigation of the violations and arguing in favor of reinstatement. And, our review of the record shows that Stirnemann never indicated that he wanted to personally address the district court. Thus, we conclude no plain error occurred.<sup>1</sup>

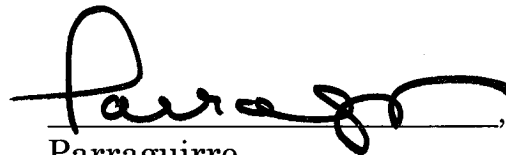
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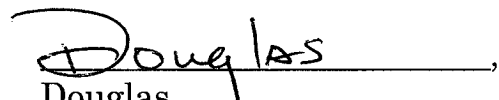
<sup>1</sup>To the extent Stirnemann argues that the district court must specifically address a probationer and inquire whether he wishes to speak, we disagree. There is no such statutory requirement and, as discussed above, due process requires only that a probationer be given the opportunity to speak. Anaya at 122, 606 P.2d at 158; compare NRS 176.015(2)(b) (before imposing a sentence the district court must "[a]ddress the defendant personally and ask him if he wishes to make a statement in his own behalf").

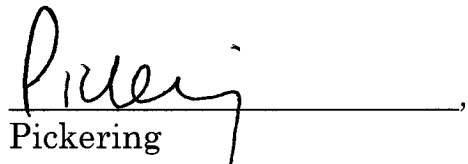
Further, as Stirnemann's counsel admitted each of the alleged violations, sufficient evidence was adduced at the hearing to support the revocation of Stirnemann's probation. See Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974) (holding that evidence supporting a decision to revoke probation 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). Accordingly, the district court did not abuse its discretion in revoking Stirnemann's probation.

Having considered Stirnemann's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Douglas, J.

  
Pickering, J.

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