IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGAR JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53247

FILED

NOV 13 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking probation. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

On June 16, 2008, the district court convicted appellant Edgar Jones, pursuant to a guilty plea, of one count of conspiracy to commit carrying a concealed weapon. The district court sentenced Jones to serve a jail term of 12 months, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed two years. Jones did not pursue a direct appeal from the judgment of conviction.

On February 2, 2009, the district court conducted a revocation hearing and entered an order revoking Jones' probation and imposing the original jail term with credit for time served. This timely appeal followed.

Jones contends that the district court abused its discretion by revoking his probation because the evidence adduced at the hearing was insufficient to prove that he violated the conditions of his probation. Jones asserts that the sole basis for revoking his probation hinged on the blood test results. Jones argues that the blood test results constituted impermissible hearsay evidence and he was denied his due process right to confront and examine adverse witnesses because the nurse who drew his

blood and the chemist who analyzed the blood sample did not testify at the revocation hearing. We conclude Jones' contentions lack merit.

It is well settled that "probation revocations are not criminal prosecutions [and] the full panoply of constitutional protections afforded a criminal defendant does not apply" at a probation revocation hearing. Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980), citing Gagnon v. Scarpelli, 411 U.S. 778 (1973); Morrissey v. Brewer, 408 U.S. 471 (1972). 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. "Due 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 (internal quotation marks and citation omitted) (alteration in original).

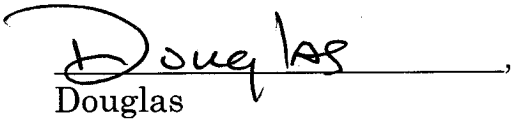
Contrary to Jones' assertion, the basis for revoking his probation did not hinge on his blood test results. At the hearing, the arresting officer testified that he found Jones unconscious and behind the wheel of a running vehicle in the drive-through lane of a Del Taco. The officer further testified that Jones smelled strongly of alcohol, could not stand erect without assistance, and failed on all six points of the horizontal gaze nystagmus test that the officer administered at the scene. Jones was given the opportunity to confront and cross-examine the arresting officer. The district court found that Jones' conduct was not as good as required by the conditions of his probation because he was drunk

behind the wheel of a vehicle with the engine running and the transmission in "drive." Although the nurse and chemist did not testify at the hearing and it is unclear whether the blood test results were formally admitted into evidence,[1] the officer's testimony alone was sufficient to demonstrate that Jones violated the conditions of his probation prohibiting him from consuming alcohol to excess and mandating that he remain in compliance with all laws and ordinances. Under the circumstances presented, we conclude that Jones' due process rights were not violated and the district court did not abuse its discretion by revoking Jones' probation.

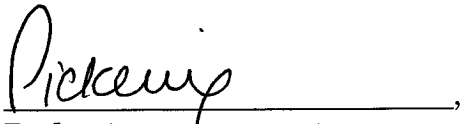
Having considered Jones' contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

---

[1]We note that although it is unclear in this instance whether the blood test results were formally admitted into evidence, admission of the blood test results would not have been improper. See NRS 47.020(3); Jaeger v. State, 113 Nev. 1275, 1282, 948 P.2d 1185, 1189 (1997); Anaya, 96 Nev. at 123-24, 606 P.2d at 158-59.

cc: Hon. Elissa F. Cadish, District Judge
Law Offices of C. Conrad Claus
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk