

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO LOPEZ-SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53337

FILED

JUL 23 2009

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court revoking probation and amending the judgment of conviction. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On November 7, 2008, the district court convicted appellant Francisco Lopez-Sanchez, pursuant to a guilty plea, of one count of possession of a controlled substance, a category E felony. The district court sentenced Lopez-Sanchez to a prison term of 12 to 32 months, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed two years. Lopez-Sanchez did not pursue a direct appeal.

On January 16, 2009, the State filed a notice of intent to seek revocation of Lopez-Sanchez's probation. Thereafter, the district court conducted a hearing and entered an order revoking Lopez-Sanchez's probation and imposing the original prison term with credit for time served. This timely appeal followed.

Lopez-Sanchez contends that the district court abused its discretion by revoking his probation. Specifically, Lopez-Sanchez asserts that his rights to due process and equal protection were violated because

the district court relied on multiple hearsay statements to establish a violation and no corroborating evidence was presented, and the district court erred by not permitting Lopez-Sanchez's counsel to testify as to what Lopez-Sanchez told him. 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. 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 v. State, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (quoting Morrissey v. Brewer, 408 U.S. 471, 484 (1972)) (alteration in original). “[D]ue process requires that a probationer be provided with written notice of the claimed violations of probation.” Jaeger v. State, 113 Nev. 1275, 1283, 948 P.2d 1185, 1190 (1997). A “probationer has a due process right to confront and question witnesses giving adverse information at the formal revocation hearing;” “to introduce evidence, such as letters, affidavits, and other material;” and “to show mitigating circumstances.” Anaya, 96 Nev. at 123, 124, 606 P.2d at 158, 159 (internal quotation and citation omitted).

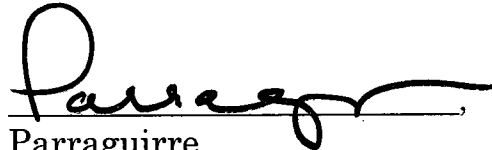
Here, the State alleged that Lopez-Sanchez violated the conditions of his probation when he failed to appear after sentencing to the Division of Parole and Probation and failed to report his current residence and employment. Lopez-Sanchez was provided written notice of these

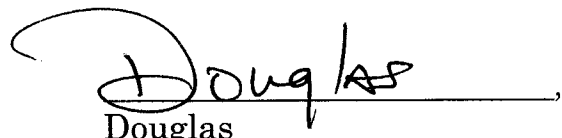
claimed violations. At the revocation hearing, Lopez-Sanchez's probation officer testified that Lopez-Sanchez never contacted the Division after being released on probation and that when she attempted to locate him at his last known address, she found the residence to be vacant. Lopez-Sanchez thoroughly cross-examined the probation officer regarding the adverse information she provided. Lopez-Sanchez was not denied the opportunity to introduce evidence and mitigating circumstances; he was present at the hearing and was provided with an interpreter. Although the district court prohibited Lopez-Sanchez's counsel from testifying that Lopez-Sanchez reentered the United States after being deported only because he strongly desired to report to the Division and comply with the conditions of his probation, counsel argued that the State failed to carry its burden to justify the revocation because the violations were not willful. Counsel specifically argued that Lopez-Sanchez was deported to Mexico and was therefore unable to report through no fault of his own. The district court found that Lopez-Sanchez had several opportunities to contact the Division but failed to do so. Contrary to Lopez-Sanchez's argument, the record reveals that the district court did not rely on hearsay evidence regarding a subsequent misdemeanor conviction when deciding to revoke his probation. Lopez-Sanchez did not deny that he failed to report to the Division or that he failed to report his current residence and employment.

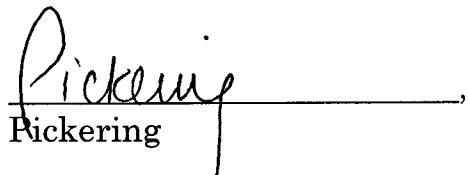
Based on the foregoing, we conclude that Lopez-Sanchez's rights to due process and equal protection were not violated and that the district court did not abuse its discretion by finding that Lopez-Sanchez's conduct was not as good as required by the conditions of his probation.

Having considered Lopez-Sanchez's contention and concluded it is without merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Douglas W. Herndon, 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