

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSARIO WILLIAMS A/K/A ROSARIO
DONALD WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53912

FILED

JAN 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court revoking appellant Rosario Williams' probation. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Williams contends that the district court erred in relying on his probation officer's hearsay testimony to establish the violations and without that testimony, insufficient evidence supported the revocation. We disagree. Hearsay is not prohibited in probation revocation hearings, and Williams has failed to demonstrate that all of the probations officer's testimony was hearsay—the probation officer testified that he personally asked Williams about some of the admissions at a later time. See NRS 51.065(1); NRS 47.020(3)(c); Anaya v. State, 96 Nev. 119, 123-24, 606 P.2d 156, 158-59 (1980). Moreover, sufficient other grounds existed to reasonably satisfy the district court that Williams' conduct was not as good as required by the conditions of probation—the district court specifically stated that it revoked Williams' probation based in part on his having viewed pornography, which Williams' counsel conceded during argument. See Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974).

Williams also contends that he was deprived of due process during the revocation proceeding because he was denied the opportunity to

speak. The State contends that given Williams' admissions to the probation violations and the nature of those admissions, any error was harmless. We agree with Williams because the mandates of due process, as well as state law, require that a probationer be given the opportunity to appear and speak on his own behalf during a probation revocation hearing. See NRS 176A.600(2)(a); Anaya, 96 Nev. at 122, 606 P.2d at 158. We further conclude that the error was not harmless because Williams was not given the opportunity to explain the circumstances surrounding the violations or present any mitigating factors not addressed by his counsel. See Morrissey v. Brewer, 408 U.S. 471, 488 (1972); Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973). Therefore, we conclude that Williams is entitled to a new probation revocation hearing, before a different district court judge, during which Williams is afforded a meaningful opportunity to be heard.¹ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings before a different district court judge consistent with this order.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

¹Because we conclude that Williams is entitled to a new probation revocation hearing we need not address his contention that the district court relied on a material mistake of fact.

cc: Hon. T. Arthur Ritchie, Chief Judge
Hon. Jackie Glass, 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