

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE JESUS HERRERA III A/K/A JOSE
JESUS HERRERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54217

FILED

FEB 03 2010

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 Jose Jesus Herrera's probation and amending his judgment of conviction. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

First, Herrera contends that the State violated his due process rights during the May 7, 2009, probation revocation hearing by failing to provide him with a copy of the arrest report and not producing the police officer who gave adverse information against him. See Anaya v. State, 96 Nev. 119, 122-25, 606 P.2d 156, 158-59 (1980). We conclude that the district court cured these constitutional shortcomings by providing Herrera with a copy of the arrest report and continuing the revocation hearing until the State could produce the police officer as a witness. We also conclude that the district court did not abuse its discretion by continuing the hearing.

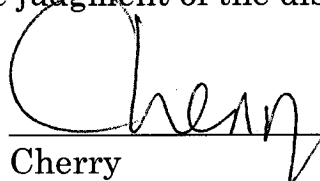
Second, Herrera contends that the district court abused its discretion during the June 9, 2009, probation revocation hearing by granting the State's motion for an additional continuance after the State announced that it was unable to produce the police officer for cross-examination. Herrera specifically claims that the State did not exercise due diligence in securing the witness's presence in court and failed to show good cause for seeking the continuance as required by Hill v. Sheriff, 85 Nev. 234, 452 P.2d 918 (1969), and Bustos v. Sheriff, 87 Nev. 622, 491 P.2d 1279 (1971). Hill and Bustos address a defendant's procedural right to have a preliminary hearing within 15 days of his arrest and do not apply to probation revocation hearings. Herrera does not have a right to a speedy probation revocation hearing, Del Hoyo v. State, 109 Nev. 1216, 866 P.2d 261 (1993), and he has not demonstrated that the district court abused its discretion by granting the continuance, see Mulder v. State, 116 Nev. 1, 9, 992 P.2d 845, 850 (2000).

Third, Herrera contends that the district court's active role in eliciting testimony from the State's witness during the May 7, 2009, probation revocation hearing "denied [him] due process and a fundamentally fair proceeding free of judicial partiality." Even assuming that the district court erred by questioning the State's witness at this hearing, Herrera was not prejudiced because the witness did not observe the probation violation, the State was required to produce the police officer who did witness the violation, and the State shouldered its burden to prove that Herrera violated his probation when the probation revocation

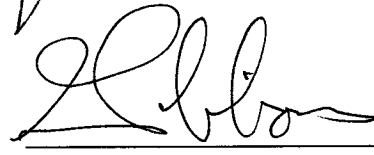
hearing resumed. See, e.g., Duckett v. State, 104 Nev. 6, 12-13, 752 P.2d 752, 755-56 (1988).

Having considered Herrera's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. James M. Bixler, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk