IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG ANTHONY MARTINEZ,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34977

FILED

MAR 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court revoking appellant's probation.

On January 28, 1999, the district court convicted appellant Craig Anthony Martinez, pursuant to a guilty plea, of one count of conspiracy to violate the Controlled Substance Act and sentenced him to serve twelve (12) to thirty-two (32) months in prison. The court suspended the sentence and placed Martinez on probation for a period of four years.

On July 26, 1999, pursuant to the conditions of his probation, Martinez submitted a urine sample at the probation office. Testing by an independent laboratory revealed that the urine sample contained methamphetamine and amphetamine at a total drug concentration greater than 300 ng/ml. The Division of Parole and Probation filed a violation report. Following a hearing, the district court found that Martinez had violated his probation by ingesting a controlled substance. The court revoked Martinez's probation. Martinez filed this timely appeal.

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Martinez first contends that the district court erred in revoking his probation without evidence that the amount of drugs present in his urine was the result of the ingestion of controlled substances during, rather than before, he commenced his probationary term. We conclude that this contention lacks merit.

Revocation of probation is within the district court's discretion and the district court's determination will not be disturbed absent an abuse of discretion. Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). "Evidence beyond a reasonable doubt is not required to support a court's discretionary order revoking probation. The evidence and facts must reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation." Id.

The urine sample in this case was collected almost six months after the commencement of Martinez's probationary period. At the revocation hearing, Martinez offered no evidence that amphetamine and methamphetamine appear in urine at a concentration greater than 300 ng/ml six months after ingestion. Considering the length of time between commencement of the probationary period and collection of the sample, we conclude that the evidence and facts could reasonably satisfy the district court that Martinez had violated the conditions of his probation.

Martinez also argued that the district court erred in admitting the results of the urine test. Martinez complains that the state failed to establish that the sample

was properly taken by the local probationary officers. We conclude that this contention lacks merit.

Under facts similar to those in this case,[1] this court has held that testimony by a parole and probation officer, who did not personally perform tests but testified to the normal procedures followed when testing a urine sample, was properly admitted because "it was reliable and made under assurances of accuracy not likely to be enhanced by calling the people who actually performed the drug tests." Jaeger v. State, 113 Nev. 1275, 1282, 948 P.2d 1185, 1189 (1997). Martinez distinguishes Jaeger as a "harmless error case" because this court noted that the significance of the positive drug test was substantially reduced as there were other violations that also supported revocation. Martinez points out that his probation was revoked based solely on the positive drug test. While Martinez is correct, we conclude that this distinction does not lead to a different result in this case. Bivens testified that a male officer is assigned to watch male probationers, like Martinez, collect the sample and that the probationer then delivers the sample to the testing room at the probation office. There is no suggestion in the record that this procedure was not followed. Moreover, the chain of custody of the sample once it was sent to the independent laboratory was established by affidavits that the district court admitted into evidence. Under the

[1]The only witness against Martinez was Stephanie Bivens, a parole and probation officer who testified as to the normal procedures followed by the Division of Parole and Probation when collecting and testing a urine sample. Bivens did not personally collect the sample or perform the tests.

circumstances, we conclude that the district court did not err in admitting the test results.

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

ORDER this appeal dismissed.

Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. J. Michael Memeo, District Judge
Attorney General
Elko County District Attorney
Elko County Public Defender
Elko County Clerk