

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35074

MELODY CAREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

FILED

MAR 17 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court revoking appellant's probation.¹

On February 24, 1998, the district court convicted appellant Melody Carey, pursuant to a guilty plea, of one count of possession of a controlled substance. The court sentenced Carey to twelve (12) to forty-eight (48) months in the Nevada State Prison, suspended the sentence, and placed Carey on probation for a period of three (3) years with special conditions.²

On September 29, 1999, the Division of Parole and Probation filed a probation violation report, recommending that the district court revoke Carey's probation for various

¹We note that the proper person notice of appeal filed in this case indicates that this is an appeal from the judgment of conviction. The judgment of conviction was filed on February 24, 1998. The notice of appeal was filed on October 29, 1999, well after the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court. See *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994). Accordingly, to the extent that Carey sought to appeal from the judgment of conviction, we conclude that we lack jurisdiction to consider the appeal.

²The district court previously had given Carey a deferred sentence in August 1997. Carey failed to comply with the terms of the deferred sentence.

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violations of the terms of her probation.³ Following a revocation hearing wherein the court heard testimony and received documentary evidence, the court denied Carey's motion for reinstatement to probation and revoked Carey's probation. Carey filed this appeal.

Carey contends that the district court erred by revoking her probation. In particular, Carey points out that the results of her drug test were negative for the presence of any controlled substances. Carey somehow believes that the negative results had a prejudicial effect "as it was one of the basis [sic] for the revocation." We conclude that Carey's 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 district court considered testimonial evidence that Carey had tested positive for controlled substances or alcohol on two occasions at the New Life Program, but that a drug test conducted at a hospital and one conducted subsequently at the Division of Parole and Probation had been negative. The court also received documentary evidence of the

³The Division previously had filed a probation violation report against Carey on March 8, 1999. After a hearing on that report, the district court reinstated Carey to probation and modified the terms of the probation to require Carey to complete Vitality House and Step II as a condition of reinstatement.

negative test result at the hospital. Several witnesses testified to other alleged violations by Carey, including her failure to enter the Step II Program as ordered by the court and her association with a parolee. We conclude that this evidence was sufficient to reasonably satisfy the district court that Carey's conduct had not been as good as required by the conditions of her probation. We further conclude that the district court did not abuse its discretion by revoking Carey's probation.⁴ Accordingly, we

ORDER this appeal dismissed.

Young J.
Young
Agosti J.
Agosti
Leavitt J.
Leavitt

cc: Hon. Michael R. Griffin, District Judge
Attorney General
Carson City District Attorney
Kenneth J. McKenna
Carson City Clerk

⁴To the extent that Carey challenges the revocation order on the ground that there was no preliminary inquiry as required by NRS 176A.580, we conclude that Carey cannot demonstrate prejudice. Carey was afforded a full and fair final revocation hearing in district court, including the opportunity to confront and cross-examine the witnesses against her. We therefore conclude that the revocation hearing in district court remedied any deficiency in the preliminary stages of the revocation process.