IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC MATHEW RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56356

FILED

MAR 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Michelle Leavitt, Judge.

First, appellant Eric Mathew Rodriguez contends that the district court violated his due process rights by basing its probation revocation decision on the evidence that gave rise to new criminal charges because the new charges were ultimately dismissed with prejudice. 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) (internal quotation marks and alteration omitted). Rodriguez has not demonstrated that the evidence presented

during the preliminary hearing was unreliable or inaccurate. We conclude that Rodriguez's fundamental due process protections were not violated when this evidence was presented during the probation revocation hearing and the evidence was sufficient to demonstrate that Rodriguez's conduct was not as good as required by the conditions of his probation.

Second, Rodriguez contends that the district court violated the Double Jeopardy Clause by revoking his probation as punishment for criminal charges that another court dismissed with prejudice. The Double Jeopardy Clause protects a defendant from both successive prosecutions and multiple punishments for the same criminal offense. U.S. Const. amend. V; United States v. Dixon, 509 U.S. 688, 695-96 (1993). It is not implicated here because the probation revocation was merely the reinstatement of Rodriguez's original sentence for the underlying crime, and not punishment for the conduct that led to the probation revocation. See U.S. v. Brown, 59 F.3d 102, 104-05 (9th Cir. 1995).

Third, Rodriguez contends that the district court violated his Sixth Amendment right to confront his accuser by allowing the State to admit the testimonial statements of an unavailable declarant into evidence. See U.S. Const. amend. VI; Crawford v. Washington, 541 U.S. 36 (2004). However, the Sixth Amendment Confrontation Clause applies only to criminal prosecutions, and probation revocation proceedings are not criminal prosecutions. U.S. v. Hall, 419 F.3d 980, 985-86 (9th Cir. 2005); Anaya, 96 Nev. at 122, 606 P.2d at 157. Therefore, this contention is without merit.

Fourth, Rodriguez contends that the district court abused its discretion by basing its probation revocation decision on "layers of hearsay evidence" and argues that it was wrong for the State to claim "that 'there

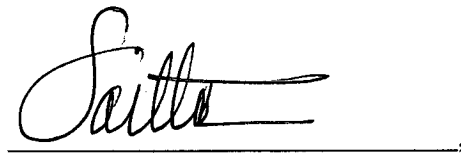
are no rules of evidence' at revocation hearings." The admissibility of evidence at a probation revocation hearing is not governed by the statutory rules of evidence, NRS 47.020(3)(c); instead, it is governed by a due process balancing standard, which considers the interests of the parties and the purpose, nature, and quality of the evidence, Anaya, 96 Nev. at 123, 125, 606 P.2d at 158, 160.

Rodriguez appears to challenge the admissibility of the victim's statements to the police and the dispatcher's certificate that accompanied the 911 call recording. The challenged evidence directly implicated Rodriguez's constitutionally protected liberty interest because it was offered to establish a substantive probation violation. Officer Toby Winn testified that the victim told him that she and Rodriguez had an argument, Rodriguez pulled her off of a fence with both hands around her neck, he dragged her into the house, and he threatened to kill himself if she called the police. The district court ruled that the victim's statements to the officer were admissible as excited utterances. See NRS 51.095. Rodriguez did not object to the admission of the 911 call recording, and it was not played during the hearing.

We conclude that Rodriguez's interest in confronting and questioning the victim was not as strong as the State's interest in presenting Officer Winn's testimony because the victim had failed to appear in previous proceedings, the victim's statements to the officer were made under circumstances that offered assurances of accuracy, the officer presented other evidence that was consistent with the victim's statements, and Rodriguez was able to test the accuracy and reliability of the officer's testimony. Accordingly, we conclude that Rodriguez has not demonstrated that the district court abused its discretion by considering this evidence.

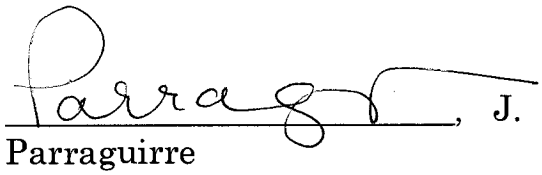
Having considered Rodriguez's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Saitta

_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk