

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEREMI FAJARDO A/K/A JEREMY
FAJARDO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57038

FILED

MAR 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from an amended judgment of conviction, pursuant to a guilty plea, of possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

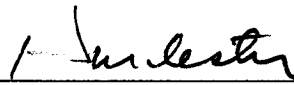
Appellant Jeremi Fajardo contends that the district court abused its discretion at sentencing by imposing a prison term constituting cruel and unusual punishment. Fajardo's claim is not properly raised in this appeal. The amended judgment of conviction revokes Fajardo's probation and merely reinstates the sentence imposed in the original judgment of conviction filed more than three years earlier. Fajardo waived his right to challenge the severity of his sentence by failing to pursue the matter in a direct appeal. See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Therefore, we conclude that Fajardo is not entitled to relief.

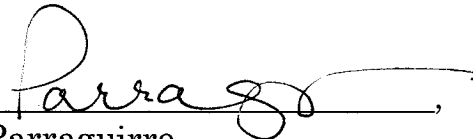
To the extent that Fajardo claims that the district court abused its discretion by revoking his probation, we disagree. At the

revocation hearing, Fajardo conceded that he failed to comply with the conditions of his probation. See generally McNallen v. State, 91 Nev. 592, 540 P.2d 121 (1975) (revocation of probation affirmed where violation by probationer not refuted). Therefore, we conclude that the district court did not abuse its discretion by finding that his conduct was not as good as required by the conditions of his probation. See Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). Accordingly, we

ORDER the amended judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk