IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON KALE HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58509

FILED

MAY 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking appellant Brandon Kale Harris' probation. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Harris contends that he was denied due process because the State failed to provide discovery at his probation revocation hearing which might have contained exculpatory or impeachment evidence. U.S. Const. amend. XIV, § 1; Nev. Const. art. 1, § 8, cl. 5. Specifically, Harris contends that the State failed to provide the Division of Parole and Probation's computer database records documenting Harris' communications with his probation officer and the Child Protective Service records for a witness who testified against him.

We have never held that the disclosure requirements described in Giglio v. United States, 405 U.S. 150, 153–55 (1972), and Brady v. Maryland, 373 U.S. 83, 87 (1963), apply to probation revocation hearings. See Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) ("Parole and probation revocations are not criminal prosecutions; the full panoply of constitutional protections afforded a criminal defendant does not apply."); see also NRS 176A.600; Jaeger v. State, 113 Nev. 1275, 1281, 948 P.2d 1185, 1189 (1997) (explaining that mere assertion that

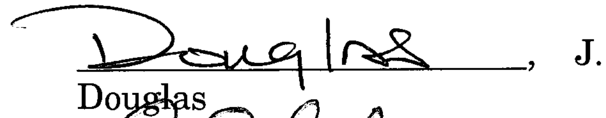
12-14757

documents might be helpful is not sufficient to require disclosure). However, even if these requirements did apply, the nondisclosure of Brady or Giglio evidence only justifies a rehearing if the withheld information is material. Kyles v. Whitley, 514 U.S. 419, 433–34 (1995). Here, Harris failed to show how the requested records would have affected the outcome of his revocation hearing. Steese v. State, 114 Nev. 479, 492, 960 P.2d 321, 330 (1998) ("Evidence is material when there is a reasonable probability that had the evidence been available to the defense, the result of the proceeding would have been different."). According to the district court, it was persuaded by the testimony of a police officer who discovered Harris outside the home of the victim at five o'clock in the morning with the odor of alcohol on his breath. Even if Harris was able to successfully discredit the testimony of the probation officer and the victim's mother, the police officer's testimony was more than sufficient to revoke Harris' probation. Therefore, we conclude that Harris is not entitled to relief.

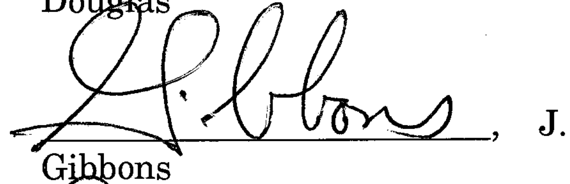
Harris also contends that the district court abused its discretion by revoking his probation without ordering the State to disclose the records and by taking judicial notice that Harris' cell phone had Internet access. The decision to revoke probation is within the broad discretion of the district court and will not be disturbed absent a clear showing of abuse. Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). Because Harris failed to show that the nondisclosed information was material, we conclude that the district court did not abuse its discretion by denying Harris' discovery request. Furthermore, the district court's decision to take judicial notice of Harris' access to the Internet, if error, was harmless because the district court determined that any one of Harris' three violations would have been sufficient to revoke his probation.

Accordingly, we conclude that the district court did not abuse its discretion by revoking Harris' probation, see NRS 176A.630(1), and we

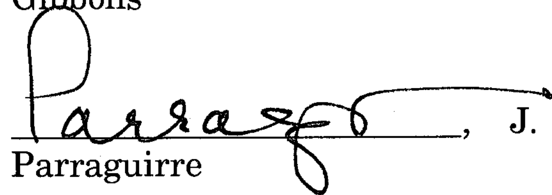
ORDER the judgment of conviction AFFIRMED.



_______________, J.
Douglas



_______________, J.
Gibbons



_______________, J.
Parraguirre

cc: Hon. Valorie J. Vega, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk