

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLEN KEITH JEWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60930

ALLEN KEITH JEWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60931

FILED

JAN 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE IN DOCKET NO. 60930 AND ORDER
AFFIRMING IN PART, REVERSING IN PART AND REMANDING IN
DOCKET NO. 60931

These are appeals from district court orders revoking appellant Allen Keith Jewell's probation in two district court cases. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge. We elect to consolidate these appeals for disposition. See NRAP 3(b)(2).¹

Jewell contends that the district court abused its discretion by revoking his probation in both cases. In these appeals, Jewell notes that

¹In district court case no. CR10-5827, Jewell pleaded guilty to one gross misdemeanor count of conspiracy to commit fraudulent use of a credit card (Docket No. 60930). In district court case no. CR11-5939, Jewell pleaded guilty to one gross misdemeanor count of conspiracy to commit non-support of a child by a parent (Docket No. 60931).

he “served nearly” half of his 36-month probationary terms.² We disagree with Jewell’s contention.

The district court’s decision to revoke probation will not be disturbed absent an abuse of discretion. Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). At the revocation hearing for the two cases, Jewell conceded that he failed to comply with the conditions of his probation and admitted to all of the violations alleged in the reports prepared by the Division of Parole and Probation. See generally McNallen v. State, 91 Nev. 592, 540 P.2d 121 (1975) (revocation of probation affirmed where violation by probationer not refuted). As a result, the district court found that Jewell’s conduct was not as good as required and revoked his probationary terms. See Lewis, 90 Nev. at 438, 529 P.2d at 797. We conclude that the district court did not abuse its discretion.

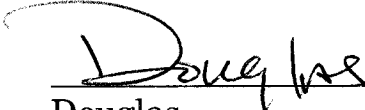
In Docket No. 60390, Jewell also contends that the district court abused its discretion by ordering the sentence in district court case no. CR10-5827 to run consecutively to the sentence imposed in district court case no. CR11-5939 (Docket No. 60931). Our review of the record, however, reveals that Jewell is mistaken. Instead, the sentence imposed in district court case no. CR11-5939 was ordered to run consecutively to the sentence imposed in district court case no. CR10-5827. Although Jewell does not raise the same abuse-of-discretion allegation in Docket No. 60931, the State, nevertheless, concedes error, noting that the judgment of conviction in the more recent case, district court case no. CR11-5939, was silent on the matter and, therefore, the sentences must be run concurrently. See NRS 176.035(1) & (3).


²According to the violation report prepared by the Division of Parole and Probation in district court case no. CR11-5939, Jewell completed only seven months of his 36-month probationary term in that case.

We conclude that the district court abused its discretion by ordering the sentence in district court case no. CR11-5939 to run consecutively to the sentence imposed in district court case no. CR10-5827 after revoking Jewell's probation. See NRS 176A.630(5) (upon revoking a probationary term, the district court may "[m]odify the original sentence imposed by reducing the term of imprisonment and cause the modified sentence to be executed" (emphasis added)); see also Wilson v. State, 123 Nev. 587, 596-97, 170 P.3d 975, 981 (2007) (holding that, on remand, a district court may not increase a lawfully imposed sentence affirmed on appeal). Therefore, we reverse the district court's order revoking probation in district court case no. CR11-5939 to the extent it ordered the underlying sentence to be run consecutively to the sentence imposed in district court case no. CR10-5827, and remand the matter to the district court with instructions to enter an amended order in that case ordering the sentence to run concurrently. Accordingly, we

ORDER the judgment AFFIRMED in Docket No. 60930 and AFFIRMED IN PART AND REVERSED IN PART AND REMANDED to the district court for proceedings consistent with this order in Docket No. 60931.


Gibbons J.


Douglas J.


Saitta J.

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk