IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ANGEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62610

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony driving and/or being in actual physical control of a vehicle while under the influence of intoxicating liquor. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Appellant David Angel argues that his termination from DUI court was a violation of his due process rights. After accepting Angel's guilty plea, the district court granted Angel's application to participate in a treatment program pursuant to NRS 484C.340(1), and Angel was referred to DUI court. The DUI court terminated Angel's participation after it concluded that he was falsifying his test results. Although Angel presents an important issue, we do not address the merits of his argument because his appeal is resolved on a threshold statutory issue. *See Spears v. Spears*, 95 Nev. 416, 418, 596 P.2d 210, 212 (1979) ("This court will not consider constitutional issues which are not necessary to the determination of an appeal."); *see also State v. Plunkett*, 62 Nev. 258, 270-71, 149 P.2d 101, 104 (1944) ("[A] constitutional question will not be determined unless clearly involved, and a decision thereon is necessary to a determination of the case.").

This court reviews questions of statutory interpretation de novo. *State v. Lucero*, 127 Nev. ___, ___, 249 P.3d 1226, 1228 (2011). Because "[t]he words of a governing text are of paramount concern," Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012), "this court will not look beyond the express language unless it is clear that the plain meaning was not intended." *Hernandez v. Bennett-Haron*, 128 Nev. ___, ___, 287 P.3d 305, 315 (2012).

NRS 484C.340(4) provides that once a district court decides to grant an application for treatment,

> the court *shall*:
>
> > (a) Immediately, without entering a judgment of conviction and with the consent of the offender, *suspend further proceedings and place the offender on probation* for not more than 5 years upon the condition that the offender be accepted for treatment by a treatment facility, that the offender complete the treatment satisfactorily and that the offender comply with any other condition ordered by the court.

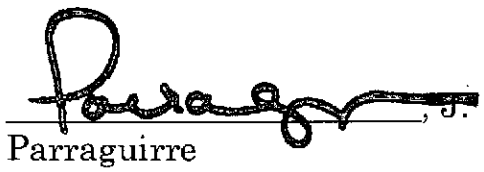
(Emphases added). The word "'shall' is mandatory and does not denote judicial discretion." *Johanson v. Eighth Judicial Dist. Court*, 124 Nev. 245, 249-50, 182 P.3d 94, 97 (2008) (internal punctuation omitted); *see also* NRS 0.025(1)(d) ("'Shall' imposes a duty to act."). Therefore, NRS 484C.340(4) plainly directs the district court to place an offender on probation and to require, as a condition of probation, acceptance into and completion of a treatment program along with any other condition ordered by the district court. *See Savage v. Third Judicial Dist. Court*, 125 Nev. 9, 19, 200 P.3d 77, 83 (2009) (stating that NRS 484.37941(4)(a), the prior version of NRS 484C.340(4)(a), "not only provides the district court with

the authority to place an offender on probation while he is in treatment, the statute requires it").

Here, the district court properly suspended the proceedings after accepting Angel's plea and deciding to grant his application for treatment, but it did not place him on probation. Because Angel was not placed on probation, he did not receive the notice, preliminary inquiry, formal revocation hearing, and other protections to which probationers are entitled in district court. NRS 176A.600; *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157-58 (1980). The only remedy at this point is to reverse and remand to the district court to follow NRS 484C.340(4) and, if appropriate, place Angel on probation or conduct such other and further proceedings as may be appropriate.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



Parraguirre, J.

Douglas, J.

Cherry, J.

cc: Hon. Jennifer P. Togliatti, District Judge
Peter K. Cleary
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk