

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEONDRE EUGENE EVANS, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65106

FILED

JAN 21 2015

TRACIE K. LINDAMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking probation. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

The district court convicted appellant of conspiracy to commit robbery pursuant to his guilty plea. Initially, the district court sentenced appellant to a prison term of 14 to 48 months, suspended the sentence, and placed him on probation. However, the district court later revoked appellant's probation and imposed the original sentence based on a violation report and the results of a probation revocation hearing.

Appellant claims that the district court violated his due process right to confront and question the actual sources of the information used against him and improperly based its revocation decision on multiple hearsay testimony instead of verified facts. He relies primarily on *Hornback v. Warden*, 97 Nev. 98, 625 P.2d 83 (1981), and *Anaya v. State*, 96 Nev. 119, 606 P.2d 156 (1980), but, unlike the appellants in those cases, he did not object to the probation officer's testimony on due process or hearsay grounds nor did he challenge the accuracy of the facts contained in the violation report. See *Hornback*, 97

Nev. at 100, 625 P.2d at 84; *Anaya*, 96 Nev. at 121, 606 P.2d at 157. Moreover, hearsay is allowed at a probation violation hearing. See NRS 47.020(3)(c). Accordingly, we review for plain error. See NRS 178.602; *Gallego v. State*, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (reviewing unpreserved claims for plain error), *abrogated on other grounds by Nunnery v. State*, 127 Nev. ___, ___ n.12, 263 P.3d 235, 253 n.12 (2011).


“In conducting plain error review, we must examine whether there was error, whether the error was plain or clear, and whether the error affected the defendant’s substantial rights.” *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted). “[T]he burden is on the defendant to show actual prejudice or a miscarriage of justice.” *Id.* Here, the record reveals that appellant stipulated to the financial obligation violation and did not refute the remaining probation violations. Accordingly, we conclude that appellant has not demonstrated error affecting his substantial rights and therefore has not shown plain error. See *United States v. Olano*, 507 U.S. 725, 734 (1993) (An error that affects substantial rights is one that “affected the outcome of the district court proceedings.”); *McNallen v. State*, 91 Nev. 592, 540 P.2d 121 (1975) (affirming revocation of probation where probationer did not refute violation); see generally *Anaya*, 96 Nev. at 123-24, 606 P.2d at 158-59 (discussing the admissibility of hearsay in probation revocation hearings).


Appellant further claims that the district court erred by revoking his probation for failing to meet his financial obligations and absconding because no evidence was presented that he willfully failed to meet his financial obligations and he maintained contact with the Division of Parole and Probation. However, appellant stipulated to the financial obligation violation and failed to refute the reporting violation. We


conclude that the stipulation and evidence presented at the revocation hearing could have “reasonably satisf[ied] the judge that the conduct of the probationer has not been as good as required by the conditions of probation.” *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974).

Having considered appellant’s claims and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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