

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARVIN DWAYNE KING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65994

FILED

FEB 04 2015

TRAVIS K. LINDENMAN
CLERK OF THE COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court revoking probation. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

On April 3, 2014, the district court convicted appellant, pursuant to a guilty plea, of battery by strangulation. The district court sentenced appellant to a prison term of 24 to 60 months, ordered the sentence to be suspended, and placed appellant on probation for a period not to exceed 3 years.

On May 12, 2014, the Division of Parole and Probation filed a violation report alleging that appellant violated the conditions of his probation by possessing bullets and gang paraphernalia. Thereafter, the district court conducted a probation revocation hearing, revoked appellant's probation, and imposed the original sentence with credit for time served.

Appellant claims that the district court violated his due process right to confront and question witnesses giving adverse information at formal revocation hearings. Appellant argues that the State's sole witness was a substitute probation officer who had never

supervised him, was not familiar with the evidence supporting the alleged violations, and presented only hearsay testimony.


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). Evidence supporting a decision to revoke probation must merely be sufficient to reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation. *Id.*


However, “[d]ue process requires, at a minimum, that a revocation be based upon verified facts so that the exercise of discretion will be informed by an accurate knowledge of the probationer’s behavior.” *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (internal quotation marks and brackets omitted). To this end, a “probationer has a due process right to confront and question witnesses giving adverse information.” *Id.* at 123, 606 P.2d at 158.

Our review of the record reveals that the probation officer who accused appellant of violating the conditions of his probation was not present at the revocation hearing and the State’s sole witness had no firsthand knowledge of appellant’s alleged violations. However, appellant also testified at the probation revocation hearing, and he acknowledged that his cell phone contained text messages evincing several drug transactions and photographs depicting controlled substances and people “throwing” gang signs.

We conclude that any error was harmless because, based on appellant’s own testimony, the district court could reasonably find that appellant’s conduct was not as good as required by the conditions of his probation.

Having concluded that appellant is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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