

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID JAMES GALINDO-CLOUD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67144

FILED

JUN 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking appellant David Galindo-Cloud's probation. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Galindo-Cloud claims that his due process rights were violated because he was not appointed counsel to represent him at the preliminary inquiry and because the evidence used to revoke his probation was not based on verified facts. He further claims that, even assuming the evidence was sufficient to revoke his probation, the district court abused its discretion and acted arbitrarily and capriciously by revoking his probation and imposing the underlying sentence based on a minor violation. We disagree.

A probation revocation proceeding is not a criminal prosecution and "the full panoply of constitutional protections afforded a criminal defendant does not apply." *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (citing *Gagnon v. Scarpelli*, 411 U.S. 778 (1973)). At a minimum, due process requires revocation to be based upon "verified facts." *Id.* at 122, 606 P.2d 157. The 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. *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). 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. *Id.*

Initially, we note there is no absolute due process right to the *appointment* of counsel at a probation revocation hearing. *Gagnon*, 411 U.S. at 790 (establishing standards for appointment of counsel at a probation revocation hearing); *Fairchild v. Warden*, 89 Nev. 524, 525, 516 P.2d 106, 107 (1973) (adopting standards for appointment of counsel as set forth in *Gagnon*); *see also* NRS 176A.600(2)(b) (giving probationer a statutory right to *obtain* counsel). Even assuming Galindo-Cloud was not appointed counsel to represent him at the preliminary inquiry,¹ Galindo-Cloud was represented by appointed counsel at the formal probation revocation hearing and therefore his due process rights were not violated.

Further, we conclude Galindo-Cloud failed to demonstrate that his due process rights were violated or the district court abused its discretion when revoking his probation because sufficient evidence was presented to support the revocation of his probation.

Galindo-Cloud faced probation revocation in this matter as well as in an additional matter at the same time. At the probation revocation hearing, Galindo-Cloud's probation officer testified Galindo-Cloud signed an admission in September 2014 in which he admitted to using methamphetamine and verbally admitted to using methamphetamine again in October 2014. Galindo-Cloud had an opportunity to cross-examine the probation officer. At the hearing,


¹The record before this court does not contain any documentation regarding the preliminary inquiry.


Galindo-Cloud addressed the court and admitted to using methamphetamine in September, but denied admitting using methamphetamine in October. The court found the officer's testimony regarding Galindo-Cloud's oral admission in October was credible. The judge acknowledged he previously warned Galindo-Cloud he would revoke Galindo-Cloud's probation if he violated his probation again. The judge also stated that he would not revoke on a single use, but it was everything considered together that warranted revocation at this time. The judge noted that since 1998 Galindo-Cloud had accrued over 50 convictions and been given a lot of opportunities to get himself clean. The judge acknowledged he could modify the sentence, but stated

I don't see that this is the type of case where that discretion should be exercised, and it's for the following reason: The defendant has already been given break after break, and leniency upon leniency upon leniency in this case . . . and I really don't see any reason to give him one more break, one more bit of leniency.

The court found that Galindo-Cloud's conduct was not what was expected of him and revoked his probation, imposing the underlying sentence.

We conclude Galindo-Cloud is not entitled to relief, and we ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elliott A. Sattler, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk