

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALFONZO DARNELL TOLBERT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67199

**FILED**

AUG 25 2015

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order revoking probation and an amended judgment of conviction. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Appellant Alfonzo Tolbert claims the district court abused its discretion by revoking his probation because his curfew violation occurred while he was obtaining medicine and diapers for his infant child, the allegation he tested positive for marijuana was not supported with test results or records showing the test was administered, and the cellular phone photograph of people holding up gang signs did not indicate he was currently involved with a gang.

We review the district court's decision to revoke probation for abuse of discretion. *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). Our review of the record on appeal reveals the district court heard testimony from which it could reasonably infer that Tolbert's conduct was not as good as required by the conditions of his probation.<sup>1</sup>

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<sup>1</sup>The Honorable James M. Bixler, District Judge, presided over the probation revocation hearing.


*See id.* Accordingly, we conclude that Tolbert has not demonstrated the district court abused its discretion.

Tolbert also claims the district court abused its discretion by sentencing him to a prison term of 24 to 60 months or, alternatively, his sentence constitutes cruel and unusual punishment. An appeal from an amended judgment of conviction may only challenge the amended judgment of conviction to the extent it differs from the original judgment of conviction. *Cf. Sullivan v. State*, 120 Nev. 537, 540-42, 96 P.3d 761, 763-65 (2004) (entry of an amended judgment of conviction can only provide good cause to file an untimely post-conviction petition for a writ of habeas corpus if the claims raised relate to the amendment). Because the court imposed the original sentence, this claim is not properly raised in this appeal. To the extent this appeal can be construed as an appeal from the original judgment of conviction, the notice of appeal was not timely filed. *See* NRAP 4(b)(1)(A). Therefore, we lack jurisdiction to consider this claim. *See Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (“[A]n untimely notice of appeal fails to vest jurisdiction in this court.”).

Having concluded Tolbert is not entitled to relief, we

ORDER the order revoking probation and the amended judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Jennifer P. Togliatti, District Judge  
Brent D. Percival  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk