

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LESLEY ANDREW GREEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72375

FILED

MAR 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

Lesley Andrew Green appeals from a judgment of conviction, pursuant to a guilty plea, for driving under the influence of alcohol (third offense). Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

After entry of Green's August 2012 guilty plea, the district court suspended all proceedings and placed Green on probation for a period not to exceed 60 months on the conditions that he be accepted by a treatment facility, he complete the program satisfactorily, and he comply with all conditions of probation. Green's case was then transferred to the First Judicial District Court's DUI Court Program. The DUI Court held a hearing on May 25, 2016, at which it concluded, over the State's objection, that Green had successfully completed the program. The DUI Court filed a return report indicating Green had successfully completed the program and was graduated from it on October 29, 2015.

Green's case was transferred back to the Second Judicial District Court, where the district court questioned the DUI Court's finding that Green had successfully completed the program. The district court noted it did not have the authority to override the DUI Court's findings but

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concluded the DUI Court's order must have been the result of a clerical error. Specifically, the district court found Green had not successfully completed the DUI Court program because he had not attended a victim-impact panel as required by NRS 484C.530 and had not paid all of his fines prior to leaving the program.¹ The district court then implicitly revoked Green's probation for failing to meet these two conditions when it ordered him to serve a term of 28 to 72 months in prison.²

Green challenges the district court's factual findings underlying its decision to revoke probation. 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.* The record before this court contains no evidence that Green's conduct was not as good as required by the probation conditions imposed upon him.

¹The parties agree the DUI Court did conclude Green had successfully completed the program and the district court improperly couched its rejection of the DUI Court's finding as a "clerical error." We agree there was no clerical error, as demonstrated by the DUI Court's minutes. The parties dispute whether a district court has the authority to reject a specialty court's finding regarding completion of a specialty court program. This appears to be an issue of first impression that we need not address here in light of our disposition.

²Neither party has raised any objection to the district court's unorthodox method for revoking probation, and in light of our disposition, we need not address it here. See *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157-58 (1980) (discussing the minimum procedures necessary under the Due Process Clause to revoke probation).

The district court found Green failed to attend a victim-impact panel. However, nothing in the record suggests Green was ordered to attend such a panel, either as a condition of successfully completing the DUI Court program³ or as a condition of probation. Contrary to the State's assertion, NRS 484C.530 does not require Green to attend a victim-impact panel; rather, it requires the court to order a defendant to attend a panel and then, if he is so ordered, the defendant must provide proof of attendance. *See* NRS 484C.530(2), (3). Because Green was never ordered to attend a victim-impact panel, it was not a condition of his probation, and his failure to attend could not be a ground to revoke his probation. We therefore conclude the district court clearly abused its discretion in relying on this ground to revoke Green's probation.

The district court also found Green failed to pay his fees prior to graduation from the DUI Court program. Nothing in the record before this court suggests payment of fees in full was a requirement for successful completion of the DUI Court program. The district court's order placing Green on probation and imposing fees set no timeframe within which Green had to pay the fees. And as the district court acknowledged, Green paid his fees in full prior to the final district court hearing on whether to revoke his probation. We therefore conclude the district court clearly abused its discretion in relying on a failure to pay fees to revoke Green's probation.


The State, pointing to a condition of probation that Green abstain from alcohol, argues the district court could have relied on Green's November 2016 arrest for driving under the influence of alcohol as a ground


³Green made an offer of proof to the district court that the DUI Court did not require attendance at a victim-impact panel as part of its program. The district court declined to take evidence on this point.

for revoking his probation. The State's argument is unavailing. First, the district court did not rely on that as a ground to revoke probation. Second, the condition imposed was that Green had to abstain "during his participation in the program." However, as the district court found, Green completed the program in October 2016. There is no evidence in the record Green failed to abstain from alcohol during his participation in the DUI Court program.

Because no evidence in the record indicates Green's conduct was not as good as required by the conditions of probation actually imposed on him, we conclude he is entitled to the benefit of the bargain he made in exchange for entering a guilty plea. Accordingly, we

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Lynne K. Simons, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk