

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID ABEDON PINNEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70884

FILED

JUN 14 2017

ELIZABETH A. DOWNS
CLERK OF DISTRICT COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Abedon Pinney appeals from an order of the district court revoking probation and an amended judgment of conviction. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Pinney contends his right to due process was violated because the district court did not make written findings regarding the basis for his revocation and its oral findings are unclear regarding the basis for the revocation of his probation. 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). "Parole and probation revocations are not criminal prosecutions; 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). Probationers are entitled to "a written statement by the factfinders as to the evidence relied on and reasons for revoking probation." *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973) (internal parenthesis and quotation marks omitted). Transcribed oral findings ordinarily satisfy this requirement, so long as the oral findings make the basis of the revocation and the evidence relied upon sufficiently

clear. *See United States v. Sesma-Hernandez*, 253 F.3d 403, 405-06 (9th Cir. 2001).

It is clear from the record the district court concluded Pinney violated his probation by traveling to Mexico without permission. When the sentencing court placed Pinney on probation, it explicitly informed Pinney he could not travel to Mexico absent permission from his probation officer. Further, the written conditions of probation explicitly stated Pinney could not conduct out-of-state travel "without first obtaining written permission." During the revocation hearing, the district court heard testimony explaining Pinney had been granted permission to travel to California, but he had also traveled to Mexico without permission.

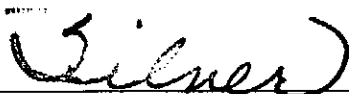
Pinney acknowledged he had traveled to Mexico, and asserted he had a document demonstrating that he had been given permission to travel to Mexico, but the document was in Minnesota where Pinney had spent the majority of his time on probation. The district court expressed its concern that Pinney traveled to Mexico without permission, but agreed to continue the revocation proceedings in order to permit Pinney an opportunity to obtain the document.

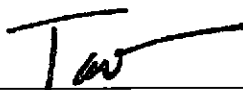
At the next hearing, Pinney could not produce the document and again asked for a continuance, which the district court granted. At the final hearing approximately one month after the initial revocation hearing, Pinney was again unable to produce the document. After learning Pinney could not produce a document showing he had been granted written permission to travel to Mexico, the district court announced its decision to revoke Pinney's probation.

The transcripts, taken as a whole, demonstrate the district court revoked Pinney's probation because he had traveled to Mexico

without permission and in violation of the terms of his probation. Accordingly, the record supports the district court's conclusion that Pinney's conduct was not as good as required by the conditions of his probation. *See Lewis*, 90 Nev. at 438, 529 P.2d at 797. Under these circumstances, we conclude Pinney has not demonstrated the district court abused its discretion when revoking probation. Accordingly, we

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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