

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JIHAD ANTHONY ZOGHEIB,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70144

FILED

FEB 23 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Jihad Anthony Zogheib appeals from an order of the district court revoking probation and third amended judgment of conviction. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

First, Zogheib argues the district court abused its discretion in revoking his probation because the State had previously agreed Zogheib could withdraw from probation if he paid full restitution and he had done so prior to the revocation hearing. Zogheib also asserts his relatively minor probation violations did not warrant revocation of probation or imposition of the original prison sentence.

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). Evidence supporting a decision to revoke probation must be merely 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 State alleged Zogheib violated the conditions of his probation by gambling at casinos after curfew on numerous occasions and

Zogheib stipulated to violating the terms of his probation at the revocation hearing. At the revocation hearing, Zogheib's counsel referenced a discussion with the State regarding Zogheib's ability to withdraw from probation following full payment of the restitution, but Zogheib's counsel acknowledged they had not "technically" reached an agreement. Further, Zogheib's original crimes involved fraudulent activity at casinos, the district court specifically ordered Zogheib not to enter a gaming establishment as a condition of probation, and the district court noted at the revocation hearing that Zogheib's issues with gambling had "started the whole thing." A review of the record reveals the district court could reasonably find Zogheib's conduct was not as good as required by the conditions of his probation. *See id.* Accordingly, Zogheib has not demonstrated the district court abused its discretion in revoking his probation and imposing the original prison sentence. *See* NRS 176A.630.

Second, Zogheib argues he had an agreement with the State regarding withdrawing from probation in exchange for full payment of the restitution. Zogheib asserts he is entitled to specific performance of that agreement despite violating the conditions of his probation. As previously stated, Zogheib acknowledged at the probation revocation hearing that he did not have an agreement with the State regarding withdrawing from probation in exchange for payment of restitution. Therefore, Zogheib is not entitled to relief for this claim.


Third, Zogheib argues he did not have fair warning that he would violate a condition of his probation by gambling at a casino. Zogheib asserts he did not realize this was a condition because the probation agreement did not specifically include this condition. Zogheib also asserts he believed he could resume gambling after he fully paid his

restitution obligations. The record reveals the district court orally informed Zogheib of this condition and Zogheib asserted that he would not gamble anymore. At the probation revocation hearing, the district court specifically found Zogheib was aware of the conditions of his probation and the record supports this finding. Accordingly, Zogheib has not demonstrated the district court abused its discretion in revoking his probation and imposing the original prison sentence.¹

Having concluded Zogheib is not entitled to relief, we

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹In his reply brief, Zogheib asserts the gambling condition of his probation was void because the previous amended judgments of conviction referencing this condition were invalid. However, Zogheib did not raise this issue in his opening brief, and we decline to consider it because reply briefs are limited to answering new matters set forth in the answering brief. See NRAP 28(c); *Bongiovi v. Sullivan*, 122 Nev. 556, 569 n.5, 138 P.3d 433, 443 n.5 (2006). As a separate and independent ground for denying relief, we conclude Zogheib waived this claim by failing to raise it in a direct appeal from the previous amended judgments of conviction. See *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999).

cc: Hon. Kerry Louise Earley, District Judge
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Clark County District Attorney
Eighth District Court Clerk