

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RIMA EDWARD FAZZAH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81074-COA

**FILED**

**FEB 25 2021**

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

*ORDER OF AFFIRMANCE*

Rima Edward Fazzah appeals from a judgment of conviction, entered pursuant to an *Alford*<sup>1</sup> plea, of theft. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

First, Fazzah contends the district court acted arbitrarily and capriciously in terminating Fazzah's participation in a problem gambling diversion program. If a person enrolled in a problem gambling diversion program does not satisfy the court-imposed conditions of the treatment, the court has the discretion to sentence that person. NRS 468A.220(2)(d). A district court's decision regarding diversionary treatment is analogous to a sentencing decision, *Stromberg v. Second Judicial Dist. Court*, 125 Nev. 1, 8, 200 P.3d 509, 513 (2009), and "[a] district court is vested with wide discretion regarding sentencing," *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).

When Fazzah elected to submit to treatment pursuant to NRS 458A.220, the district court ordered sentencing to be postponed for five years and ordered Fazzah to pay a \$5,000 fine or complete 500 hours of community service, and pay restitution in the amount of \$68,427 within

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<sup>1</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).

three years. After three years, the Division of Parole and Probation (Division) requested Fazzah be terminated from the diversion program. Fazzah argues that, since the five-year period of her deferred sentencing had not expired, she still had time to complete her restitution and community service or fine requirements. However, Fazzah's claim regarding the deadline for the terms of her diversion program is misleading.

After the Division's request for termination, the district court found that Fazzah had not completed any community service within the previous two years or completed restitution payments. The district court modified its initial order to allow for a good faith effort toward restitution payments and ordered Fazzah to complete a minimum of 30 hours of community service each month.<sup>2</sup> The district court held multiple status check hearings, but Fazzah did not meet the community service requirements in any month of the four-month period. Because Fazzah had multiple opportunities but still failed to meet her obligations, even after multiple status checks, we conclude the district court did not abuse its discretion in terminating her participation in the diversion program.

Second, Fazzah argues that, by placing her on probation after terminating her from the diversion program, the district court improperly suspended her sentence for longer than the five years allowed by NRS 176A.500(1)(b). She argues her sentence is illegal because, when combined with the time she spent in the diversion program, the probationary period has the potential to exceed the statutory maximum. At the time Fazzah was sentenced, NRS 176A.500(1)(b) limited the period of probation for a felony to five years. *See* 2017 Nev. Stat., ch. 503, § 1, at 3312. Fazzah failed to demonstrate she was on probation during the time she spent in the

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<sup>2</sup>Nothing in NRS chapter 458A prevents a district court from modifying the conditions of the gambling diversion program.

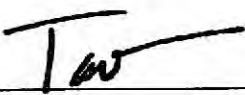
diversion program. Rather, her sentencing had been postponed, and she was sentenced and placed on probation only after she was terminated from the diversion program. Therefore, we conclude Fazzah's sentence was not illegal, and the district court did not abuse its discretion in placing her on probation after terminating her from the diversion program.

Third, Fazzah contends the district court abused its discretion by giving her the option of either paying a \$5,000 fine or completing 500 hours of community service. Fazzah argues that requiring community service in lieu of a fine is akin to incarceration for failing to pay a fine. The United States Supreme Court has approved the imposition of community service in lieu of a fine as a constitutional alternative to imprisoning an indigent defendant for failing to pay a fine. *See Williams v. Illinois*, 399 U.S. 235, 244-45 & n.21 (1970). Therefore, we conclude the district court did not abuse its discretion in allowing Fazzah the option of completing community service in lieu of a fine.

Finally, Fazzah argues the cumulative effect of the errors in this case warrants reversal. As Fazzah has identified no errors, we conclude there are no errors to cumulate. *See Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Cristina D. Silva, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk