

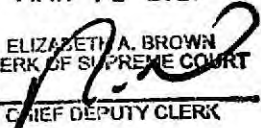
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGELO SOWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81586-COA

FILED

MAR 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Angelo Sowell appeals from an order for revocation of probation and second amended judgment of conviction. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

First, Sowell argues the district court erred in revoking his probation by relying on facts taken via judicial notice. Because Sowell did not object when the district court took judicial notice of records contained in the district and justice court filing systems, he is not entitled to relief absent a demonstration of plain error.¹ See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, he must show “(1) there was error; (2) the error is plain, meaning that it is clear under the current law from a casual inspection of the record; and (3) the error affected [his]

¹Sowell argues that he was unable to object because the district court did not declare its intent to take judicial notice until after the parties had rested their arguments. However, the district court’s declaration occurred in open court with the parties present. Therefore, we disagree that Sowell lacked an opportunity to object. Cf. *Todd v. State*, 113 Nev. 18, 24, 931 P.2d 721, 724 (1997) (finding defendant was deprived of an opportunity to object to the court’s consideration of a letter sent to the district judge prior to sentencing because defendant was unaware of the existence of the letter).

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substantial rights.” *Id.* at 50, 412 P.3d at 48 (internal quotation marks omitted).

A July 14, 2020, probation violation report (nontechnical) alleged Sowell committed at least three probation violations, one of which was being arrested on new charges. At the probation violation hearing, the district court took judicial notice of a temporary custody report in its court filing system and a record contained in the justice court’s filing system, both reflecting a new arrest. Based solely on these records, the district court determined that Sowell violated his probation by being arrested on new charges.

Sowell is unable to demonstrate error that is plain from the record. He fails to show the district court clearly violated the law when it based its decision to revoke his probation on documents contained in the courts’ filing systems. *See* NRS 47.150(1) (providing that a court may take judicial notice sua sponte); NRS 47.130(2) (providing that a judicially-noticed fact must be “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”); *Mack v. Estate of Mack*, 125 Nev. 80, 91-92, 206 P.3d 98, 106 (2009) (setting forth an exception to the general rule against taking judicial notice of records in another case where the closeness of the cases and the particular circumstances warrant judicial notice). Moreover, Sowell fails to show how any alleged error affected his substantial rights, because he did not refute the arrest or argue that an arrest was not a violation of his terms and conditions of probation. *See McNallen v. State*, 91 Nev. 592, 592-93, 540 P.2d 121, 121 (1975) (affirming revocation of probation where probationer did not refute violation). Accordingly, we conclude Sowell is not entitled to relief on this claim.

Second, Sowell claims the district court violated his right to due process by revoking his probation based on evidence not subject to confrontation: hearsay statements in the probation officer's testimony and the records in the courts' filing systems. "Due process requires, at a minimum, that a revocation be based upon verified facts so that the exercise of discretion will be informed by an accurate knowledge of the probationer's behavior." *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (internal quotation marks and brackets omitted). To this end, a "probationer has a due process right to confront and question witnesses giving adverse information." *Id.* at 123, 606 P.2d at 158.

As to the testimony, the district court heard the probation officer's testimony at the probation revocation hearing regarding Sowell's arrest. Sowell objected to the officer's testimony as hearsay. The district court overruled the objection but did not consider the officer's testimony in reaching its revocation decision. Accordingly, we conclude Sowell did not demonstrate his due process rights were violated by the officer's testimony.

As to the records, Sowell did not object to the district court's decision to take judicial notice of the courts' records. Thus, he is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 52, 412 P.3d at 49. Sowell fails to demonstrate the district court's reliance on judicially noticed court records was a clear violation of Sowell's right to due process. Further, because Sowell does not challenge the accuracy of the facts on which the district court relied, he has not demonstrated how the alleged error affected his substantial rights. *See Anaya*, 96 Nev. at 123-24, 606 P.2d at 158-59 (finding that the presumptive reliability of an arrest report "used to establish facts constituting a probation violation becomes

more questionable” when the “accuracy of the facts alleged is challenged by the probationer”).

Finally, Sowell argues on appeal that his contact with law enforcement was not a violation of the terms of his probation. Sowell failed to provide a copy of the standard terms of his probation in his appendix. As the appellant, it is Sowell’s obligation to provide this court with an adequate record for review. *See McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009); *see also* NRAP 30(b)(3) (stating the appellant’s appendix filed on appeal shall include “any other portions of the record essential to determination of issues raised in appellant’s appeal”). Because Sowell did not include portions of the record that are essential to the determination of his claim, he fails to demonstrate he is entitled to relief. Accordingly, we

ORDER the order for revocation of probation and second amended judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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