

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL SALDANA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84029-COA

FILED

SEP 14 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Daniel Saldana appeals from an order for revocation of probation and amended judgment of conviction filed on December 27, 2021. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Saldana argues the district court erred by revoking his 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).

Saldana first argues the district court erred by denying his request for graduated sanctions pursuant to NRS 176A.630 instead of revoking his probation. The Legislature amended NRS 176A.630 in 2019 to require the use of graduated sanctions when a probationer commits technical violations of the conditions of his probation. Saldana fails to demonstrate the 2019 statutory amendments apply to him.

“Parole and probation revocations are not criminal prosecutions.” *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980). Rather, “[r]evocation of parole or probation is regarded as reinstatement of

the sentence for the underlying crime, not as punishment for the conduct leading to the revocation.” *United States v. Brown*, 59 F.3d 102, 104 (9th Cir. 1995). That is, probation revocation proceedings are part of the penalty for the underlying crime. *See Johnson v. United States*, 529 U.S. 694, 701 (2000) (“[P]ostrevocation penalties relate to the original offense.”). And “it is well established that under Nevada law, the proper penalty is the penalty in effect at the time of the commission of the offense and not the penalty in effect at the time of sentencing.” *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008).

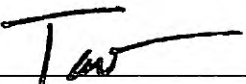
The statutory amendment had an effective date of July 1, 2020. *See* 2019 Nev. Stat., ch. 633, § 35, at 4401-03; § 137, at 4488. Because the Legislature gave no indication that it intended the graduated-sanction scheme to apply retroactively, the amendment applies only to probationers who committed their offenses on or after July 1, 2020. Saldana committed his offense in 2018. Accordingly, he was not entitled to the application of graduated sanctions. Therefore, we conclude the district court did not err by rejecting Saldana’s request for graduated sanctions.

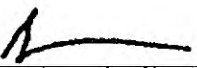
Saldana also argues the district court abused its discretion by revoking his probation based on unverified facts. Saldana stipulated to the facts as set forth in the probation violation report and agreed that the State could prove those facts. Therefore, we conclude Saldana fails to demonstrate the district court abused its discretion by finding his conduct was not as good as required by the terms of his probation and revoking it. *See Lewis*, 90 Nev. at 438, 529 P.2d at 797 (providing that 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). Accordingly, we

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

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

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

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

cc: Hon. Mary Kay Holthus, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk