

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN L. CLAYBORNE, JR.,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37970

**FILED**

AUG 24 2001

LAURENCE BLOOM  
DEPUTY CLERK

JOHN L. CLAYBORNE, JR.,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37971

JOHN L. CLAYBORNE, JR.,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37972

ORDER OF AFFIRMANCE

These are appeals from district court orders revoking appellant's probation in three district court cases. We elect to consolidate these appeals for disposition pursuant to NRAP 3(b).

On December 4, 1998, the district court entered judgments of conviction against appellant in three district court cases. In each case, appellant pleaded guilty to one count of using a controlled substance. The district court sentenced appellant to serve 12 to 48 months in prison in each case and ordered that the underlying sentences be served consecutively. The district court then suspended execution of the sentences and placed appellant on probation for three

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years in each case, with the probationary terms to run concurrently.

Although the record is not entirely clear, the district court minute entries in each case indicate that the State first sought to revoke appellant's probation in March of 1999. The record does not disclose the grounds for the revocation proceedings. However, the record does indicate that the district court reinstated appellant to probation in each case on the condition that appellant enter the Salvation Army Program and attempt to make arrangements to transfer his probation supervision to the State of Alaska.

In April of 2001, the State again sought to revoke appellant's probation in each of the district court cases. The district court conducted a hearing on May 4, 2001. At that hearing and in the violation report prepared by the Division of Parole and Probation, the district court was informed that appellant had left Nevada without the Division's permission and moved to Washington in August of 2000. While in Washington, appellant was arrested for possession of a stolen vehicle. Although that charge apparently did not result in a conviction, appellant was transported to Nevada as the result of a probation hold. At the conclusion of the revocation hearing, the district court revoked appellant's probation in each of the district court cases and ordered appellant to serve the underlying sentences.

Appellant contends that the district court abused its discretion by revoking probation and imposing the underlying sentences rather than reinstating appellant to probation or modifying the underlying sentences so that appellant could serve them concurrently. In particular, appellant argues that either of these actions would have been more appropriate than revocation because he had obtained

employment while in Washington and had not suffered any other convictions. We conclude that appellant's contention lacks merit.

The decision to revoke a defendant's probation is within the trial court's sound discretion and this court will not disturb that decision absent "a clear showing of abuse of that discretion."<sup>1</sup> A trial court may exercise its broad discretionary powers and revoke a defendant's probation where "[t]he evidence and facts . . . reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation."<sup>2</sup>

After a review of the record in these cases, we conclude that appellant has not demonstrated that the district court abused its discretion. The information provided to the district court indicates that appellant did not comply with the conditions of his probation. Most importantly, appellant left Nevada without permission and thus frustrated one of the primary purposes of probation - supervision of the probationer's conduct to ensure that he is conducting himself as required by the conditions of probation. Given this conduct and the prior revocation proceeding, after which appellant was given another chance to comply with the conditions of probation, we conclude that the district court did not abuse its discretion in revoking appellant's probation in these cases. Moreover, we conclude that the district court did not abuse its discretion by refusing to modify the original sentences imposed by ordering them to be served concurrently.<sup>3</sup>

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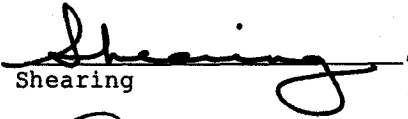
<sup>1</sup>Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974).

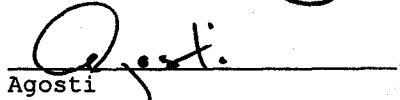
<sup>2</sup>Id.

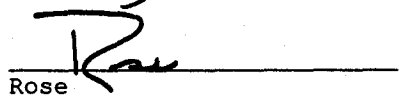
<sup>3</sup>See NRS 176A.630(5) (providing that, upon violation of a probation condition, district court may "[m]odify the original  
*continued on next page . . .*

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgments of the district court AFFIRMED.

  
Shearing J.

  
Agosti J.

  
Rose J.

cc: Hon. Steven R. Kosach, District Judge  
Attorney General  
Washoe County District Attorney  
David D. Spitzer  
Washoe County Clerk

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*. . . continued*

sentence imposed by reducing the term of imprisonment and cause the modified sentence to be executed").