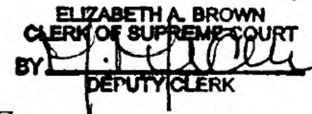
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DAMIAN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86706-COA

FILED

AUG 01 2024



ORDER OF AFFIRMANCE

Michael Damian Lewis appeals from a district court order revoking probation and amended judgment of conviction. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Lewis argues that the district court abused its discretion by revoking probation without a formal revocation hearing. Lewis concedes he was arrested for new offenses while on probation and ultimately pleaded no contest to two misdemeanor violations, including carrying a concealed weapon. He argues that the misdemeanors constituted technical violations of probation and that the district court erred by finding a non-technical violation based on the arrest report for his new offenses without first allowing him to question the officer who wrote the report. The State responds that Lewis stipulated to the factual basis of a new gross misdemeanor offense, which was a non-technical violation warranting revocation.

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). A district court may revoke probation upon a first violation and without graduated

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sanctions if it finds the probationer "committed" a non-technical violation of probation. NRS 176A.630(1). "The commission of a . . . [n]ew felony or gross misdemeanor" is a non-technical violation. NRS 176A.510(8)(c)(1)(I). The meaning of "committed" and "commission" as they are utilized in NRS 176A.630(1) and NRS 176A.510(8)(c)(1) is an issue of statutory interpretation. "Statutory interpretation is a question of law subject to de novo review." *Williams v. State Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017) (quoting *State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004)). "The goal of statutory interpretation is to give effect to the Legislature's intent." *Id.* (internal quotation marks omitted). "To ascertain the Legislature's intent, we look to the statutes' plain language." *Id.*

Based on the plain language of NRS 176A.630(1) and NRS 176A.510(8)(c)(1)(I), the Legislature intended "committed" and "commission" to mean that the probationer performed or perpetrated a new felony or gross misdemeanor. *See Commit*, Black's Law Dictionary (12th ed. 2024) (defining "commit," in pertinent part, as "[t]o perpetrate (a crime)"); *Commission*, Black's Law Dictionary (12th ed. 2024) (defining "commission," in pertinent part, as "[t]he act of doing or perpetrating (as a crime)"). Accordingly, pursuant to NRS 176A.630(1) and NRS 176A.510(8)(c)(1)(I), the district court need not find that a probationer was convicted of a felony or gross misdemeanor in order to revoke probation based upon a first violation without the use of graduated sanctions. Rather, it need only find that a probationer performed or perpetrated a new felony or gross misdemeanor based on verified facts presented at a probation revocation hearing.

Here, the district court stated it was relying, in part, on the arrest report surrounding Lewis' new charges to determine that Lewis

performed or perpetrated a new felony or gross misdemeanor. Lewis stated that he wanted to question the reporting officer about the conduct for which Lewis was arrested. "The process due a probationer is determined by balancing the strength of the probationer's interest in confronting and cross-examining the primary sources of the information being used against him against the very practical difficulty of securing the live testimony of actual witnesses to his alleged violation . . . ." *Anaya v. State*, 96 Nev. 119, 123, 606 P.2d 156, 158 (198). Generally, an arrest report introduced at a probation revocation hearing is considered "prima facie evidence of the facts it contains." *Id.* at 123, 606 P.2d at 158-59. "When the accuracy of the facts alleged is challenged by the probationer, however, the presumptive reliability of the report when used to establish facts constituting a probation violation becomes more questionable." *Id.* at 123-24, 606 P.2d at 159.

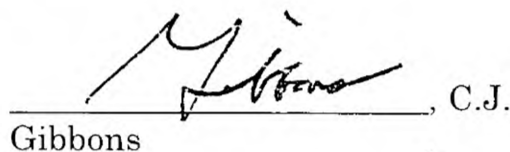
In addition to relying on the arrest report, Lewis provided the district court with the justice court minutes showing that Lewis pleaded no contest to a county code violation of carrying a concealed weapon. In balancing Lewis' interest in confronting the officer, the district court commented that the report coupled with Lewis' plea to the misdemeanor carrying a concealed weapon demonstrated a non-technical violation and questioned the need for the officer's testimony. The State added that Lewis had stipulated to the factual basis for the misdemeanor charge of carrying a concealed weapon, and Lewis did not object or correct this representation.[1] The district court found that carrying a concealed weapon would be at least a gross misdemeanor under the Nevada Revised Statutes, *see* NRS 202.350(1)(d), (2), and therefore that Lewis committed at least a new gross

[1]There is nothing in the record on appeal to contradict the State's representation.

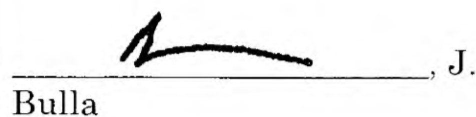
misdemeanor under the statutes. Lewis does not challenge that he committed the misdemeanor, nor does he dispute the factual basis for that charge. And Lewis does not provide this court with the minutes from the justice court proceedings on the new crimes, nor does he provide this court with a copy of the arrest report or violation report, all of which was provided to the district court.[2] *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."); *see also* NRAP 30(b). Therefore, we presume these documents support the district court's decision to deny Lewis' request for a formal revocation hearing and to revoke his probation. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

Because the district court relied on more than the arrest report to find that Lewis committed a non-technical violation of probation, he fails to demonstrate the district court abused its discretion by denying him the ability to question the officer at the revocation hearing. Therefore, we conclude that Lewis is not entitled to relief, and we

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



_______________________, C.J.
Gibbons



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Bulla

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Westbrook

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[2]We note that "a court record of a conviction is presumptively far more reliable than an arrest report, which does not involve an adjudication of guilt beyond a reasonable doubt." *Anaya*, 96 Nev. at 124 n.1, 606 P.2d at 159 n.1.

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