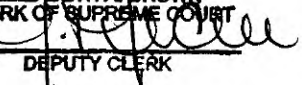


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHAD WINDHAM MITCHELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87920-COA

FILED
AUG 01 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Chad Windham Mitchell appeals from a district court order revoking probation. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

Mitchell argues the district court erred by revoking his probation without first finding that he committed a nontechnical violation of the conditions of his probation. The distinction between technical and nontechnical violations only came about when the Legislature amended NRS 176A.630 in 2019, and Mitchell 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 “[i]t 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 Jud. Dist. Ct. (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008).


The statutory amendments 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 amendments to apply retroactively, the amendments apply only to probationers who committed their underlying offenses on or after July 1, 2020. Mitchell committed his underlying offense in 2018. Accordingly, the statutory amendments did not apply to Mitchell’s probation revocation, and he is not entitled to relief for any failure of the district court to adhere to the statutory amendments.

Mitchell also argues the district court abused its discretion by revoking his probation because the incorrect officers testified about his failure to report and because the district court relied on information stricken from a prior violation report. 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). 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. *Id.*

As a condition of his probation, Mitchell was required to report in person to the Division of Parole and Probation as instructed. The probation violation report alleged Mitchell violated the conditions of his probation, in part, by failing to report in August, September, and October 2023. At the probation violation hearing, Mitchell testified that he did not report in person in September and October. In light of this testimony, the

district court could reasonably find that Mitchell's conduct was not as good as required by the conditions of his probation notwithstanding the errors Mitchell alleged occurred at the revocation hearing. Therefore, we conclude the district court did not abuse its discretion by revoking Mitchell's probation, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen A. Sigurdson, District Judge
Washoe County Alternate Public Defender
Marc Picker Law
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk