


IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS ALLEN SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85347

FILED
AUG 14 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony driving under the influence. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Douglas Smith argues that he was deprived of due process at the probation revocation hearing. Specifically, Smith asserts that the State failed to provide timely notice of the witnesses it intended to call at the revocation hearing and failed to disclose a copy of a DUI arrest report prepared by Officer Michael Mitchell, a testifying witness.

To revoke probation, the district court must be reasonably satisfied “that the conduct of a probationer has not been as good as required by the conditions of probation.” *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). “[R]evocation of probation is within the exercise of the [district] court’s broad discretionary power and . . . will not be disturbed” absent a clear showing of abuse. *Id.*

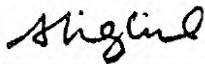
Smith was given the opportunity to participate in a program of treatment pursuant to NRS 484C.340 following a guilty plea to a third DUI offense within seven years. The district court placed Smith on probation on the condition that Smith enter and complete the Western Regional Drug Court’s DUI Court Program. Smith was later terminated from the DUI

court program, and the State sought revocation of probation. At Smith's probation revocation hearing, the district court found that Smith violated the conditions of probation in two ways: by being arrested for a new DUI offense and by being terminated from DUI court. Smith conceded he was removed from DUI court before he could successfully complete the program. *See McNallen v. State*, 91 Nev. 592, 592-93, 540 P.2d 121, 121 (1975) (affirming revocation where probationer did not refute violation). Therefore, the district court did not abuse its discretion in finding that Smith violated the terms of probation by failing to satisfactorily complete treatment.

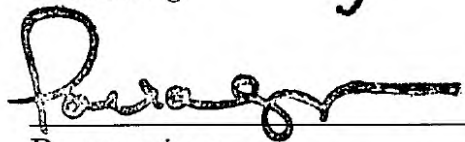
Smith's argument regarding violation of his right to due process pertains to Officer Mitchell's testimony about Smith's arrest for a new DUI offense. That evidence, however, was not necessary to establish that Smith had been removed from DUI court before completing the program, which independently supported revocation of Smith's probation. *See* NRS 176A.630(5)(b) (classifying termination from a specialty court program as a non-technical probation violation); NRS 484C.340(4)(c)(3) (requiring the sentencing court to "enter a judgment of conviction . . . if the offender fails to complete [DUI court] satisfactorily"). We conclude that Smith has failed to demonstrate any due process violation arising from any inability to access the witness list and police report in preparation for the probation revocation hearing. *See Jaeger v. State*, 113 Nev. 1275, 1280, 948 P.2d 1185, 1188 (1997) (holding that a probationer does not enjoy the same rights as a criminal defendant to obtain documents). Moreover, even if a due process violation occurred, the alleged error was harmless. *See United States v. Havier*, 155 F.3d 1090, 1092 (9th Cir. 1998) ("A due process violation at a revocation proceeding is subject to harmless error analysis."); *cf. Cortinas v.*

State, 124 Nev. 1013, 1027, 195 P.3d 315, 324 (2008) (stating that error is harmless when it appears beyond a reasonable doubt that the error complained of did not contribute to the outcome of the proceeding). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. James Todd Russell, District Judge
State Public Defender/Carson City
Law Office of Jim Hoffman
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk