

IN THE SUPREME COURT OF THE STATE OF NEVADA

BYRON CAMM SAVELY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38321

**FILED**

**NOV 15 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking appellant's probation. On August 18, 2000, appellant was convicted, pursuant to a guilty plea, of one count of possession of a controlled substance. The district court sentenced appellant to a prison term of 12 to 48 months, and then suspended execution of the sentence and placed appellant on probation for a period not to exceed three years.

On April 3, 2001, the Nevada Division of Parole and Probation (the Division) filed a violation report against appellant. A probation revocation hearing was held on July 6, 2001. At the proceeding, appellant admitted that while on probation: (1) he did not comply with the reporting requirements set forth by the Division; (2) he had failed to abstain from alcohol and reported to the probation office on three separate occasions with a blood alcohol level of .04, .09, and .17, respectively; (3) he had been arrested and convicted of driving while under the influence; and that (4) he failed to get a travel permit to travel out-of-state.

Despite his admission that he violated numerous conditions of his probation, appellant contends that the district court abused its discretion in revoking his probation because it refused to consider the option of dishonorable discharge set forth in NRS 213.1519(3).<sup>1</sup> We conclude that this contention is belied by the record. The district court heard counsel's argument with respect to dishonorable discharge, and

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<sup>1</sup>NRS 213.1519(3) provides that: "[i]f a person, after his release on parole, is convicted in another jurisdiction of a crime and sentenced to imprisonment for a term of more than 1 year, he may be given a dishonorable discharge from parole.

then considered and rejected that sentencing option prior to revoking appellant's probation. In fact, the district court expressly stated its reasons for revoking appellant's probation:

When you're granted probation one of the most important things of probation is that you don't get into any more trouble when you're on probation. Here you got a DUI while on probation. That is serious in my mind. Besides other violations. This is just a total failure of probation.

As far as just allowing you to have a dishonorable discharge, I do not agree with that concept either. There are consequences for things that people do in life. And you have got to face yours.

In other words, because appellant got a DUI and committed other violations while on probation, the district court rejected the option of dishonorable discharge.

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.<sup>2</sup> 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.<sup>3</sup>

In the instant case, the district court's finding that appellant's conduct was not as good as it should be is supported by substantial evidence. In particular, appellant admitted that he violated numerous conditions of his parole. Accordingly, we conclude that the district court did not abuse its discretion in revoking appellant's probation.

Appellant next argues that the district court's decision to revoke appellant's probation was fundamentally unfair, thereby violating appellant's due process rights, because the district court refused to consider the "change in legislation under which [appellant] was originally sentenced." Specifically, appellant argues that he should have been dishonorably discharged because the legislature amended the statute under which he was convicted to make the crime he committed, possession of less than an ounce of marijuana, a misdemeanor punished by only a fine

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

<sup>3</sup>Id.

and not by incarceration.<sup>4</sup> We conclude that revocation of appellant's parole does not violate due process because the legislative amendment to NRS 453.336 is not retroactive and did not take effect until October 2001.<sup>5</sup>

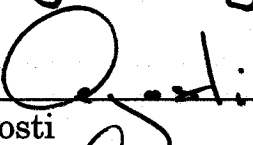
Appellant next contends that the district court abused its discretion in revoking appellant's probation because it was misinformed with respect to whether appellant successfully completed a substance abuse program. Because the district court did not revoke appellant's probation for failure to complete drug treatment, we conclude that this contention lacks merit.

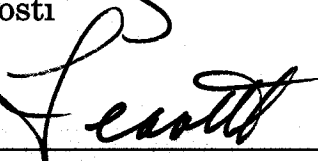
Finally, appellant contends that the district court abused its discretion in revoking appellant's probation because he was punished for his status as a substance abuser, rather than for noncompliance with the terms of his probation. In light of appellant's admission that he engaged in conduct that violated numerous conditions of his probation, we conclude that this contention lacks merit.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Dan L. Papez, District Judge  
Attorney General  
Eureka County District Attorney  
State Public Defender  
Eureka County Clerk

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<sup>4</sup>See AB 453, 71st Leg. (Nev. 2001).

<sup>5</sup>Id.