

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN MATTHEW MARQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88614-COA

FILED

JUN 16 2025

ELIZABETH A. BRC
CLERK OF SUPREME
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ORDER OF AFFIRMANCE

Brian Matthew Marquez appeals from an order for revocation of probation and amended judgment of conviction. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

First, Marquez asserts there was insufficient evidence to support revocation. He insists the evidence demonstrated that the victim initiated contact, he reconciled with the victim, and his probation officer was not aware of the family court orders. Marquez contends the district court's failure to consider the alleged violations in this context or to take his potential for rehabilitation into account resulted in a structural defect in the proceedings.

Revocation of probation is within "the trial court's broad discretionary power and such an action will not be disturbed in the absence of a clear showing of abuse of that discretion." *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). An order revoking probation need not be supported by evidence beyond a reasonable doubt. *Id.* Rather, if graduated sanctions have not been exhausted, the evidence must reasonably satisfy the judge that the defendant committed a non-technical violation of

probation, such as violating an order to stay away from the victim of the crime for which the probationer is being supervised. See NRS 176A.510(8)(c)(1)(VII); NRS 176A.630(1); *Lewis*, 90 Nev. at 438, 529 P.2d at 797; see also *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (“Due process requires, at a minimum, that a revocation be based upon verified facts” (internal quotation marks omitted)).

Pursuant to the conditions of Marquez’s probation contained in the judgment of conviction, Marquez was specifically ordered to “[h]ave no contact whatsoever with the victim or the victim’s family outside the scope of any of the Family Court orders.”¹ Probation Officer Humberto Jaimes testified the victim reported to him that Marquez had texted her, called her, and visited her residence. The officer collected screenshots of the calls and texts, as well as doorbell camera video showing Marquez at the victim’s residence. The victim expressed fear for her and her children’s lives. Additionally, the probation officer found Marquez had called the victim from pretrial detention after his arrest by violating jail rules regarding the use of a conference call. Marquez even addressed the court during the hearing and acknowledged he violated the probation condition by talking to the victim and lying about it when given a polygraph examination. He insisted he did so because he loves his family.

Despite Marquez’s contentions on appeal, the record demonstrates the district court did consider the alleged violations in context. Marquez did not produce any compelling evidence showing that he

¹The district court later amended the provision to allow Marquez contact with his children, but the provision prohibiting contact with the victim outside the contact required under the family court orders remained.

and the victim reconciled. To the contrary, testimony showed that the victim acquiesced to his demands to reconcile out of fear. Moreover, the district court was concerned that Marquez's perspective on the contact suggested revocation of probation was the only way to keep him from contacting the victim. Based on the evidence and admissions, the evidence was sufficient to reasonably satisfy the district court that Marquez violated the conditions of probation, *see McNallen v. State*, 91 Nev. 592, 592-93, 540 P.2d 121, 121 (1975) (affirming revocation of probation where probationer did not refute violation); and the district court did not abuse its discretion in revoking probation, *see Lewis*, 90 Nev. at 438, 529 P.2d at 797. While the district court may have had the discretion to impose less severe remedies, *see* NRS 176A.630(1), its decision not to do so did not constitute an abuse of discretion based on these facts.

Second, Marquez argues that, by denying his request for a continuance, the district court denied him meaningful representation at the revocation hearing.

A district court's decision to grant or deny a continuance is reviewed for an abuse of discretion. *Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). "Each case turns on its own particular facts, and much weight is given to the reasons offered to the trial judge at the time the request for a continuance is made." *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). "However, if a defendant fails to demonstrate that he was prejudiced by the denial of the continuance, then the district court's decision to deny the continuance is not an abuse of discretion." *Id.*

Marquez requested a continuance on the day of the revocation hearing so that he could retain new counsel—who was present at the

revocation hearing—to replace appointed counsel. The State objected to the continuance, asserting that it was prepared to go forward, had provided the necessary discovery to appointed counsel, and had recalled Officer Jaimes back from a family emergency to testify at the hearing. Retained counsel represented he did not believe himself ready to proceed at that time. The court trailed the matter to permit Marquez time to discuss the case with retained counsel. When the matter was recalled, retained counsel indicated he was going to move forward and the district court discharged Marquez's appointed counsel. Thereafter, the revocation hearing proceeded.

We discern no abuse of discretion by the district court. Generally, a district court abuses its discretion by denying a motion to continue if the defendant did not have an adequate time to prepare for the court proceedings. *See id.* However, the alleged lack of preparation of new counsel is not necessarily a ground for continuance where counsel is engaged just before the trial date. *See Benson v. Benson*, 66 Nev. 94, 98, 204 P.2d 316, 318 (1949); *see also Rose*, 123 Nev. at 206, 163 P.3d at 416 (considering whether the need for a continuance was the defendant's fault when deciding if the district court abused its discretion in denying it). Further, retained counsel acknowledged he could proceed after the matter was trailed. And, although Marquez now argues that a continuance would have permitted counsel the ability to authenticate evidence and verify records, he did not assert these reasons as a basis for the continuance at the time of the request. *See Higgs*, 126 Nev. at 9, 222 P.3d at 653.

Further, Marquez fails to demonstrate prejudice. *See id.* The State alleged Marquez violated the terms of his probation by contacting the victim. Marquez alleges that, had he been afforded a continuance, counsel

could have developed admissible evidence suggesting the victim vandalized Marquez's vehicle or communicated with Marquez over social media or counsel could have clarified the contact guidelines outlined in family court records. However, Marquez admitted he knowingly violated the contact order, and the State presented evidence that Marquez contacted the victim over phone and text, visited her home, and also made surreptitious efforts to contact her from jail after his arrest for violating probation. Therefore, Marquez has not demonstrated he is entitled to relief on this claim of error.

Third, Marquez asserts that the district court failed to consider less restrictive alternatives to revocation consistent with *State v. Babayan*, 106 Nev. 155, 787 P.2d 805 (1990), and to make findings regarding rehabilitative potential consistent with *Dail v. State*, 96 Nev. 435, 610 P.2d 1193 (1980).

Marquez solely relies on *Babayan* and *Dail*, but neither decision supports his argument. For instance, *Babayan* addresses potential errors occurring during grand jury proceedings and does not speak to probation revocation proceedings or the imposition of less restrictive alternatives to revocation as Marquez asserts. *See generally Babayan*, 106 Nev. 155, 787 P.2d 805. While *Dail* discusses the general goals of probation, it does not require any consideration of less restrictive alternatives to revocation before probation may be revoked. *See Dail*, 96 Nev. at 437, 610 P.2d at 1194. *Dail* does not address what findings a court needs to make before revoking probation but instead addresses whether a defendant's trial rights are not impermissibly hindered by holding a revocation hearing on alleged violations that are also offenses pending trial. *See id.* at 437-38, 610 P.2d at 1194-95. Therefore, because Marquez fails to support this claim of error

with citation to relevant authority. Marquez has not demonstrated that the district court abused its discretion in this regard. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (providing that this court need not address issues not cogently argued).

Fourth, Marquez contends his sentence is excessive and violates due process because the court did not consider the rehabilitative intent of probation. The order for revocation of probation and amended judgment of conviction merely reinstated the sentence that the district court imposed in its original judgment of conviction. Therefore, Marquez's claim could have been raised in an appeal from the original judgment of conviction and is not properly raised in this appeal. *See Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("[C]laims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings."), *overruled in part on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999).

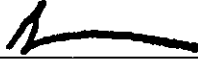
Fifth, Marquez argues the district court failed to provide a balanced and reasoned approach to the exclusion and admission of evidence. Due to this error, he alleges he could not present a meaningful defense. Marquez failed to support this claim of error with cogent argument. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6. Marquez does not identify any specific evidentiary ruling he contends the district court erred in making or assert why any ruling was erroneous. Therefore, we do not consider this claim of error on appeal.

Lastly, Marquez asserts the cumulative effect of errors warrants reversal of the order for revocation of probation and amended judgment of conviction. Because we find no errors on appeal, there are no

errors to cumulate. *See Rose*, 123 Nev. at 211-12, 163 P.3d at 420. Therefore, we conclude that cumulative error does not warrant reversal in this matter.

Having considered Marquez's contentions and concluding that no relief is warranted, we

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


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge
Christopher L. Grasso, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk