IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE ANN DYE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38330

FILED

DEC 17 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking appellant's probation. On February 28, 1997, appellant was convicted, pursuant to a guilty plea, of one count of forgery and one count of attempted forgery. The district court sentenced appellant to a prison term of twelve to thirty-two months for forgery, and a consecutive prison term of twelve to thirty-two months for attempted forgery. The district court suspended execution of the sentence and placed appellant on probation for a period not to exceed five years. As a condition of probation, the district court ordered appellant to pay $14,330 in restitution.

After conducting a hearing, the district court revoked appellant's probation in an order dated July 19, 2001. The district court found that Dye had failed to make restitution to the victim because she paid only $60 of the $14,330 ordered.

Appellant contends that the district court abused its discretion in revoking her probation because (1) the district court did not make a finding that Dye was indigent pursuant to Gilbert v. State;[1] and (2) it was

[1]99 Nev. 702, 669 P.2d 699 (1983).

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cruel and unusual punishment to revoke Dye's probation when only seven months of the five-year probation period remained. We disagree and conclude that the district court did not abuse its discretion in revoking appellant's probation.

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.[2] 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.[3]

In this case, we conclude that the district court did not err in finding that appellant's conduct was not as good as required. Specifically, there was sufficient evidence in support of the district court's finding that appellant willfully failed or refused to make a good faith effort to comply with the order to pay restitution.[4] Contrary to Dye's argument, the district court was not required to make a finding whether Dye was indigent under Gilbert. Instead, the district court found that Dye had the financial means to pay more of the restitution than she did pay, and that Dye willfully failed to satisfy the fine by only working part-time during the period when she was required to make restitution payments. This finding precluded any need for a determination of indigency.[5] The district court also found that appellant was physically able to work and was not appropriately responsive to Department of Parole & Probation attempts to collect the money owed. We also note that the district court specifically stated at Dye's sentencing and in her judgment of conviction that a bench

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[2]Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974).

[3]Id.

[4]Gilbert, 99 Nev. at 708, 669 P.2d at 703.

[5]See id.

warrant would be issued if Dye fell more than two months behind in her required restitution payments.

We also conclude that the district court did not impose cruel and unusual punishment by revoking Dye's probation when only seven months remained in her probationary period. As noted above, the district court has broad discretion to revoke probation, and the district court's decision will not be disturbed absent a clear showing of abuse. For the district court to revoke probation within the probationary period is obviously not an abuse of discretion.

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

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Clark County Clerk