



IN THE SUPREME COURT OF THE STATE OF NEVADA

KENJUAN MCDANIEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89151

Appeal from a district court order revoking probation and a third amended judgment of conviction. Eighth Judicial District Court, Clark County; Bitá Yeager, Judge.

Affirmed.

Legal Resource Group, LLC, and T. Augustus Claus, Las Vegas,
for Appellant.

Aaron D. Ford, Attorney General, Carson City; Steven B. Wolfson, District Attorney, and Karen Mishler and Shanon Clowers, Chief Deputy District Attorneys, Clark County,
for Respondent.

BEFORE THE SUPREME COURT, PICKERING, PARRAGUIRRE, and
BELL, JJ.

OPINION

By the Court, PICKERING, J.:

NRS 176A.510 establishes a system of graduated sanctions limiting the ability of the Division of Parole & Probation (P&P) and of district courts to revoke probation based on technical or minor violations. The statute

and its companion, NRS 176A.630, took effect on July 1, 2020. This appeal presents two main questions about these statutes: (1) do they apply to probationers who committed a crime before July 1, 2020, but who were not sentenced until later?; and (2) do they allow a judge to revoke probation for a single subsequent technical violation after a defendant has been reinstated on probation following one or more serious or nontechnical violations? The answer to both questions is yes. We therefore affirm.

I.

Appellant Kenjuan McDaniel was indicted in 2019 on 14 felony counts, including four counts of attempted murder, four counts of battery with use of a deadly weapon, five counts of discharge of a firearm from or within a structure or vehicle, and one count of ownership or possession of a firearm by a prohibited person. The charges arose from a 2018 shooting at the Boulevard Mall in Las Vegas. In April 2022, McDaniel pleaded guilty to three of those charges—one count each of attempted murder, discharge of a firearm, and ownership or possession of a firearm by a prohibited person. In September 2022, the district court sentenced him to five years of probation with a suspended prison sentence of 8 to 20 years. His probation was subject to several special conditions, including no use of alcohol or drugs; no possession, ownership, or control of firearms; completion of substance abuse disorder, mental health, and impulse control evaluations and any counseling deemed necessary; and payment of \$2,310 in restitution and monthly supervision fees.

One month later, P&P filed its first probation violation report against McDaniel. The report stated that, after a traffic stop on October 18, 2022, McDaniel had been arrested for illegal possession of a firearm. While this report was pending, P&P filed a supplemental report indicating that McDaniel had also been arrested for illegal possession of a firearm on September 13, 2022, the day he was orally sentenced, but before his written

judgment of conviction was entered on September 14, 2022. The district court temporarily revoked McDaniel's probation. After McDaniel stipulated to the two violations, the district court reinstated his probation with additional conditions, including that he serve six months in the Clark County Detention Center (CCDC). Separately, McDaniel was charged with and pleaded guilty to possession of a firearm by a prohibited person, a category B felony, for the September 13, 2022, offense, for which he was sentenced to 28 to 72 months concurrent to the sentence in this case. The district judge in the second case suspended McDaniel's sentence and placed him on probation.

A similar sequence played out a few months later, in June 2023. P&P filed another violation report, this one stating that McDaniel had been arrested and charged with driving under the influence of alcohol and drugs. The report also indicated McDaniel's noncompliance with other conditions, including that he pay restitution and supervision fees and submit to substance abuse, mental health, and impulse control evaluations. Again, the district court temporarily revoked McDaniel's probation; he stipulated to the violations; and the district court reinstated his probation, this time requiring that he spend 30 more days in CCDC.

Finally, in September 2023, P&P filed a third violation report after McDaniel was arrested and charged with open murder with a deadly weapon. This arrest occurred in August 2023 for a murder that allegedly occurred in 2021; upon arrest, officers determined that McDaniel was living with a known felon—another violation. The report also noted that McDaniel still had not completed his required treatment evaluations or paid his monthly supervision fees. McDaniel's probation was again temporarily revoked. Two months later, in November 2023, P&P filed a supplemental report alleging additional violations involving possible drug and firearm possession, evidence of which

was discovered through forensic searches of two phones seized during McDaniel's arrest for open murder.

After multiple evidentiary hearings, the district court permanently revoked McDaniel's probation and imposed the original 8- to 20-year prison sentence. It found that, as alleged in the September 2023 report, McDaniel violated his conditions of probation by living with a convicted felon and not attending substance abuse treatment classes. The district court's order deemed McDaniel not eligible for graduated sanctions under NRS 176A.510 because the statute went into effect in 2020, after McDaniel's underlying offense (the 2018 mall shooting). The district court alternatively held that even if the statute did apply, McDaniel was ineligible for a more lenient resolution because of his prior nontechnical violations and the violations detailed in the September 2023 report.¹ The district court concluded that revocation was also justified by the contents of the November 2023 report, in which it found sufficient evidence to show that McDaniel committed additional violations.

As a final matter, the parties dispute how much time-served credit McDaniel was due. The district court in McDaniel's separate illegal possession of a firearm case revoked his probation and executed his sentence of imprisonment on December 12, 2023, based on the open murder charge referenced in the September 2023 P&P report. It was not until July 22, 2024, that the district court revoked his probation in this case and entered its third amended judgment of conviction. Citing NRS 176.055(1), which provides credit for time "actually spent in confinement before conviction, unless the

¹The July 2024 order references a "September 2024 hearing," but this is a mistake. The district court seemingly meant to refer to the September 2023 hearing, which focused on the September 2023 P&P report.

defendant's confinement was pursuant to a judgment of conviction for another offense," the district court cut off McDaniel's credit for time served based as of December 12, 2023, and rejected McDaniel's argument this was unfair, given that he did not cause the probation revocation hearing delays.

McDaniel appeals from the district court's revocation of his probation and the corresponding third amended judgment of conviction.

II.

A.

The decision to revoke probation falls within the district court's "broad discretionary power" and is reviewed for abuse of discretion. *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974); see *Garcia v. State*, 142 Nev., Adv. Op. 42, 590 P.3d 920, 924 (2026). To support revocation, "[t]he evidence and facts must reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation." *Lewis*, 90 Nev. at 438, 529 P.2d at 797. In 2019, though, the legislature set parameters on district court discretion in this area by enacting NRS 176A.510, which laid the groundwork for a scheme mandating that courts impose a series of graduated sanctions for technical, or minor, probation violations (e.g., failure to attend assigned treatment sessions) before resorting to revocation. *Sheridan v. State*, 141 Nev., Adv. Op. 22, 567 P.3d 345, 346 (2025) (holding that where no nontechnical violations have been legitimately found, probation revocation may not occur until all graduated sanctions have been exhausted). The interpretation of those statutes presents a question of law subject to de novo review. See *Williams v. State, Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017).

Enacted in 2019, Nevada's graduated sanctions scheme became effective on July 1, 2020, and is established through NRS 176A.510 and 176A.630. NRS 176A.510 largely sets the parameters for responding to

technical probation violations and instructs P&P to flesh the scheme out in greater detail. See NRS 176A.510(1) (mandating that “[t]he Division *shall adopt* a written system of graduated sanctions” and proceeding to explain generally how it should operate) (emphasis added). The term “technical violation” is defined in the negative, as any alleged violation *other than* the commission of a substantial offense like a felony, gross misdemeanor, or domestic battery. NRS 176A.510(8)(c) (emphasis added). Central to the framework is the instruction that P&P “may not seek revocation of probation for a technical violation of the conditions of probation until all graduated sanctions have been exhausted.” NRS 176A.510(7); see *Sheridan*, 141 Nev., Adv. Op. 22, 567 P.3d at 346. Building on NRS 176A.510, the scheme’s details are set out in NRS 176A.630. This statute limits how courts may treat recurring technical violations, ending with the authorization to “[f]ully revoke the probation or suspension of sentence and impose imprisonment for the remainder of the sentence for a fourth or subsequent revocation” based on a technical violation. NRS 176A.630(2). It also reaffirms that certain acts amounting to technical violations “must not, by [themselves], be used as the only basis for the revocation of probation.” NRS 176A.630(6) (listing alcohol consumption, a positive drug test, and failure to complete a mental health or substance use treatment program as examples of conduct that, by itself, does not warrant revocation).

B.

We first address whether the graduated sanctions scheme established in NRS 176A.510 and 176A.630 governs revocation proceedings where the underlying offense was committed *before* the statutes’ 2020 effective date, but the defendant was sentenced to probation *after* that date. McDaniel’s conviction arose from a 2018 shooting, but he was not sentenced until 2022, and the conduct that led to the revocation of his probation in this case occurred

in 2022 and 2023. He argues that the determinative date to compare against the graduated sanctions scheme's effective date is the date of sentencing and that because he was sentenced and placed on probation after the statute was already in effect, his probation is governed by the graduated sanctions framework. Consistent with the district court's conclusion, the State characterizes this as an issue of statutory retroactivity and asserts that when deciding whether a criminal reform statute applies, the determinative date is the date of the underlying offense, not of sentencing. By that logic, the date of McDaniel's sentencing is irrelevant and, because his offense occurred two years before NRS 176A.510 and NRS 176A.630 took effect, the graduated sanctions scheme does not apply.

The presumption against retroactivity holds that “unless the Legislature clearly expresses its intent to apply a law retroactively, Nevada law requires the application of the law in effect at the time of the commission of a crime.” *State v. Second Jud. Dist. Ct. (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008); *see Castillo v. State*, 110 Nev. 535, 540, 874 P.2d 1252, 1256 (1994) (“changes in statutes are presumed to operate prospectively absent clear legislative intent to apply a statute retroactively”). This presumption “is a guide to interpretation, not a constitutional imperative, because [it] applies even when the Constitution does not forbid retroactivity.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 261 (2012). For example, the presumption operates even when a law alleviates, rather than enhances, criminal penalties—the latter of which would certainly be rendered unconstitutional by the Ex Post Facto Clause if done retroactively. U.S. Const. art. I, § 10 (“No State shall . . . pass any . . . ex post facto Law.”); *see, e.g., Cal. Dep’t of Corr. v. Morales*, 514 U.S. 499, 514 (1995) (holding that

the Ex Post Facto Clause was not violated by the retroactive application of a law that did not increase the measure of punishment).

Nevada courts have previously invoked the presumption against retroactivity to refrain from applying pro-defendant reform statutes that went into effect after the underlying offense occurred. *See, e.g., Pullin*, 124 Nev. at 571, 188 P.3d at 1084 (declining to apply an amendment giving courts discretion when applying a sentencing enhancement law); *Tellis v. State*, 84 Nev. 587, 591-92, 445 P.2d 938, 941 (1968) (declining to apply an amendment imposing a more lenient sentence for a controlled substance offense based on a general savings clause); *Dawson v. State*, 140 Nev., Adv. Op. 72, 559 P.3d 356, 359 (2024) (declining to apply an amendment to a habitual criminal sentencing enhancement law). The State relies heavily upon *Pullin*, a case that addressed whether a defendant's sentence should have been determined pursuant to the deadly weapon enhancement statute in place at the time of the offense or the ameliorative amendment in place at the time of sentencing. 124 Nev. at 565, 188 P.3d at 1079. The *Pullin* decision concluded that for sentencing enhancements, the determinative date for deciding which version of the statute should apply is the date of the offense, since the act that the statute regulates—there, the use of the deadly weapon—“occurs at the time [the defendant] commits the crime.” *Id.* at 572, 188 P.3d at 1084. Invoking the presumption against retroactivity, *Pullin* held that the amended statute did not apply. *Id.*

We have not applied the presumption against retroactivity to the graduated sanctions scheme enacted through NRS 176A.510 and 176A.630. But the court of appeals has, first in *Chamberlain v. State*, No. 83846-COA, 2022 WL 3270236 (Nev. Ct. App. Aug. 10, 2022), and again in *Calloway v. State*, No. 86530-COA, 2023 WL 7819533 (Nev. Ct. App. Nov. 13, 2023). The facts of those cases are functionally identical to the facts here: a probationer

whose underlying offense occurred in 2018 but who was sentenced to probation *after* NRS 176A.510 went into effect argued that he deserved graduated sanctions. *Chamberlain*, 2022 WL 3270236, at *1; *Calloway*, 2023 WL 7819533, at *1. The court of appeals disagreed, citing *Pullin* to support applying the presumption of retroactivity to NRS 176A.510’s reforms and finding no evidence of legislative intent that the statute should apply retroactively to offenses committed before 2020. *Chamberlain*, 2022 WL 3270236, at *2; *Calloway*, 2023 WL 7819533, at *1. Although these unpublished court of appeals’ decisions are not citable as precedent, *see* NRAP 36(c)(3) (repealing the ban on citing unpublished court of appeals’ decisions as precedent but only as to dispositions filed on or after August 15, 2024), we address them because the district court adopted their reasoning and the State urges that we do the same.

McDaniel challenges the court of appeals’ decisions as inconsistent with our own decision in *Muratalla v. State*, No. 81638, 2021 WL 4490255 (Nev. Sep. 30, 2021). But McDaniel overstates the significance of *Muratalla*. There, again, a probationer argued that the district court erred by failing to comply with the graduated sanctions scheme. *Id.* at *2. But rather than establish an affirmative rule regarding NRS 176A.510’s applicability, the *Muratalla* court simply rejected Muratalla’s argument in one sentence, noting that NRS 176A.510 had no bearing on the analysis because his violation was indisputably nontechnical. *Id.* *Muratalla*’s quick mention of NRS 176A.510 is thus of little value. While the other case McDaniel cites, *Elwin v. State*, No. 87011, 2024 WL 4524085, at *1 (Nev. Oct. 17, 2024), stated that these probation reforms apply “to offenses committed before July 1, 2020, but only if the offender is sentenced on or after July 1, 2020,” that unpublished decision is similarly distinguishable. There, both the offense *and* the sentencing

occurred before July 1, 2020, so the *Elwin* court did not have to settle which of those two dates was determinative. *Id.* Though this dictum supports McDaniel’s argument, it does not carry the force McDaniel seeks to ascribe to it.

With no authoritative decision on point, the applicability of the graduated sanctions scheme in cases where the date of the offense predates, but the date of sentencing postdates, NRS 176A.510’s effective date of July 1, 2020, presents a question of first impression. McDaniel offers several grounds for distinguishing this statute from the one at issue in *Pullin* and urges us to reject the court of appeals’ approach in *Chamberlain* and *Calloway*.

McDaniel first argues that unlike the more substantive statutes at issue in *Pullin*, the graduated sanctions scheme is a procedural rule governing sentencing administration and therefore *Pullin* does not control. *Pullin* addressed a deadly weapon enhancement statute, NRS 193.165, that imposed “an additional punishment for using a deadly weapon in the commission of the primary offense.” 124 Nev. at 572, 188 P.3d at 1084. The *Pullin* court concluded that the penalty should be the one in place “when the wrongdoing supporting the enhancement [i.e., use of the deadly weapon] occurred.” *Id.*; see *Chamberlain*, 2022 WL 3270236, at *1-2 (citing *Pullin*); *Calloway*, 2023 WL 7819533, at *1 (same). In contrast, McDaniel distinguishes NRS 176A.510 as a procedural rule that simply restructures how the original punishment is served, rather than a substantive rule that targets conduct underlying the original punishment, alters sentencing ranges, or imposes new punishment.

This point of distinction is consistent with the basic principle that “retroactivity is to be judged with regard to the act or event that the statute is meant to regulate.” Scalia & Garner, *supra* at 264. On one hand, if a statute regulates the conduct giving rise to an offense, such as whether the offense was

committed with a deadly weapon, then it makes sense to look to the date of the offense to decide which version applies, *Pullin*, 124 Nev. at 572, 188 P.3d at 1084; on the other hand, if a statute regulates how the district court administers probation, then it makes sense to look to the date that probation was imposed. Relying on *Chamberlain* and *Calloway*, the district court overcame the procedural-versus-substantive distinction by drawing from federal supervised release caselaw for the principle that probation revocation “is regarded as reinstatement of the sentence for the underlying crime, not as punishment for the [violation] leading to the revocation,” thereby justifying looking to the date of that underlying offense. *See Chamberlain*, 2022 WL 3270236, at *1 (quoting *United States v. Brown*, 59 F.3d 102, 104 (9th Cir. 1995)).

But as McDaniel argues, federal supervised release implicates distinct considerations such that we should be careful when importing principles from that body of law into the probation context. Specifically, in Nevada, a defendant’s prison sentence, once imposed, cannot be increased for probation violations or otherwise, whereas violation of federal supervised release may result in an additional prison sentence for the offender. *Contrast Wilson v. State*, 123 Nev. 587, 594-96, 170 P.3d 975, 979-80 (2007) (affirming that “a trial court cannot resentence a defendant to an increased term once the defendant has begun serving the initial sentence” and differentiating federal sentencing law from the “heightened citizen protections traditionally afforded under the Nevada Constitution”), *with Rico v. United States*, No. 24-1056, 607 U.S. 609, 612 (2026) (recognizing that under federal law, when a condition of supervised release is violated, “[a] judge may . . . require the defendant to serve an *additional* ‘term of supervised release after [their] imprisonment’”) (*quoting*

18 U.S.C. § 3583(h)) (emphasis added). Resting NRS 176A.510's applicability on the date of sentencing thus would not contradict federal caselaw.

McDaniel also argues that the legislative history of NRS 176A.510 supports applying it to sentences imposed after its effective date. *See Pullin*, 124 Nev. at 567, 188 P.3d at 1081 (looking to legislative history in deciding retroactivity). NRS 176A.510 was enacted as part of a landmark criminal law and procedure reform bill, A.B. 236. 2019 Nev. Stat., ch. 633, at 4371. The legislative history is of limited use: A.B. 236 contained many provisions, the graduated sanctions scheme received little attention, and the bill's retroactivity was discussed only twice. Hearing on A.B. 236 Before the Assemb. Judiciary Comm., 80th Leg., at 3-7 (Nev., Mar. 8, 2019). However, the statements by the bill's co-sponsor, Assemblyperson Steve Yeager, concerning retroactivity are significant to the question at hand:

Generally speaking, [A.B. 236's reforms] would not be retroactive. The effective date of the bill, whenever it is effective, means that *it would apply to any sentencing that happened after that date*. We would not be going back and looking at prior sentences. Although, from a fairness perspective, we may want to do that as a Legislature. It becomes extraordinarily difficult to do, particularly in the context of making sure victims had their day and had their say, to go back and undo some of that. *It would just apply going forward*.

Id. at 20 (emphases added).

These comments reveal the slipperiness of the term “retroactivity” and, it follows, the problem with applying the presumption against retroactivity without inquiring into what the statute at issue is meant to regulate. *See Retroactivity, Black's Law Dictionary* (12th ed. 2024) (noting that retroactivity “is a term often used by lawyers but rarely defined” that historically turned on “the distinction between completed and pending

transactions,” *quoting* T.C. Hartley, *The Foundations of European Community Law* 129 (1981)); Scalia & Garner, *supra* at 264. By stating that A.B. 236 “would apply to any sentencing that happened after [the statute’s effective] date,” Assemblyperson Yeager conveyed the view that the relevant act or event being regulated is the sentencing itself. Hearing on A.B. 236 Before the Assemb. Judiciary Comm., 80th Leg., at 20 (Nev., Mar. 8, 2019). The legislative history thus supports the conclusion that while the statute is not retroactive in the sense that past sentences should be revisited to be brought into alignment with its reforms, the statute *was* meant to govern sentencing going forward, after the statute went into effect. *Cf. Stromberg v. Second Jud. Dist. Ct.*, 125 Nev. 1, 5-6, 200 P.3d 509, 511-12 (2009) (finding that legislative history supported applying a statute governing substance treatment programs “to all offenders pleading guilty [to DUI] on or after” the statute’s effective date, even where their offense predated the statute). To the extent we have interpreted this legislative history differently elsewhere, *see, e.g., Dawson*, 140 Nev., Adv. Op. 72, 559 P.3d at 359 (finding that the legislature did not intend for other reforms in A.B. 236 to apply retroactively), we conclude that those discussions were incomplete insofar as they did not recognize that the legislature used the term “retroactive” to foreclose revisiting *prior* sentences, not to bar the statute from applying to *future* sentences.

As this discussion suggests, it is in fact misleading to frame the question of NRS 176A.510’s applicability as a retroactivity question at all; that would be correct only if McDaniel were seeking to apply graduated sanctions to a sentence imposed before July 1, 2020. He is not. Instead, the issue is whether the State’s preferred rule—that courts look to the date of the offense when applying new criminal statutes or amendments, as stated in *Pullin* and elsewhere—dictates the application of NRS 176A.510 and 176A.630. For the

reasons set out above, we conclude that it does not. Rather, we hold that the graduated sanctions scheme applies prospectively to any sentence imposed after its July 1, 2020, effective date.

C.

Having established that NRS 176A.510's graduated sanctions scheme applies to McDaniel's probation because he was sentenced in 2022, we turn to the district court's alternative holding that even if the statute governs, revocation is nonetheless warranted because (1) McDaniel had previously stipulated to multiple nontechnical violations (the separate September and October 2022 arrests for illegal possession of a firearm and his DUI) and (2) the November 2023 violation report provided evidence of a new nontechnical violation in addition to the technical violations asserted in the September 2023 report (living with a felon and failing to complete treatment evaluations and treatment). See NRS 176A.510(8)(c) (defining technical violations); NRS 176A.630(2) (permitting full revocation for technical violations only after three temporary revocations). McDaniel argues that this alternative holding was erroneous on both counts. Regarding the prior stipulated nontechnical violations, he argues that the district court erred by inventing an extratextual rule that having committed a nontechnical violation in the past disqualifies a probationer from NRS 176A.510's graduated sanctions for future technical violations. Regarding the nontechnical violation(s) asserted in the November 2023 report, he argues that the district court abused its discretion by finding that he had committed a new nontechnical violation because the State failed to establish that McDaniel sent the text messages that gave rise to that finding or in fact committed any wrongdoing.

It is well-established that "[p]robation may be revoked for a nontechnical violation." *Garcia*, 142 Nev., Adv. Op. 42, 590 P.3d at 924; NRS

176A.630(1). But neither NRS 176A.510 nor NRS 176A.630 explicitly addresses whether district courts may consider previously resolved nontechnical violations to support revocation when the present violation report asserts only technical violations. Nor, as McDaniel notes, does the plain text of these statutes provide that the prior commission of a nontechnical violation categorically disqualifies a probationer from receiving graduated sanctions for any future technical violation.

Consistent with their broad discretion over revocation proceedings, district courts are generally permitted to review a probationer's conduct holistically, with an eye towards their history of violations. *Kaduk v. State*, 959 So. 2d 817, 821 (Fla. Dist. Ct. App. 2007) (“[A] trial judge may consider a probationer's past probation record in determining whether to revoke for the violation or impose some lesser sanction.”); *State v. Hutchinson*, 457 P.3d 439, 446 (Utah Ct. App. 2020) (permitting a district court to consider a probationer's entire probation history in a revocation proceeding). Moreover, Nevada's graduated sanctions scheme, by design, depends on district courts being able to factor past violations—e.g., whether a probationer has committed up to four technical violations—into their decision-making to determine whether a probationer is eligible for graduated sanctions. NRS 176A.510(1)(b), for example, instructs P&P to, when fleshing out the scheme, “[t]ake into account factors such as . . . the person's previous criminal record, the number and severity of any previous violations and the extent to which graduated sanctions were imposed for previous violations.” NRS 176A.630(2) and (3) limit the range of possible sanctions based on the number of technical violations a probationer has previously committed, permitting permanent revocation based on one or more technical violations alone only where the probationer has had at least three previous temporary revocations.

While the scheme does not explicitly discuss the role of *prior* nontechnical violations in this process, it would be incongruous to permit holding a probationer's prior *technical* violations against them while prohibiting any consideration of prior *nontechnical* violations, which are necessarily more severe and thus arguably even more dispositive of whether revocation is appropriate. Instead, the scheme is concerned with probation being revoked based *only* on three or fewer technical violations. See, e.g., NRS 176A.630(6) (mandating that “[t]he commission of one of the following acts [amounting to a technical violation] by a probationer must not, *by itself*, be used as the *only* basis for the revocation of probation”) (emphasis added). And although McDaniel argues that permitting district courts to revisit previously resolved violations would implicate double jeopardy concerns, this concern lacks force because revocation does not increase a defendant's sentence or otherwise constitute double punishment; rather, it “simply alters the conditions under which [the original sentence] is served.” *United States v. Brown*, 59 F.3d 102, 105 (9th Cir. 1995); *Sylvestri v. State*, No. 63244, 2013 WL 7158509, at *1 (Nev. Nov. 14, 2013) (“the elimination of the grant of probation did not violate double jeopardy because the actual sentence imposed was not increased”) (*citing Wilson v. State*, 123 Nev. 587, 594, 170 P.3d 975, 979 (2007)); see also NRS 176A.630(1)(d) (providing that even for nontechnical violations, courts can only reduce prison time, not increase it).

We thus conclude that under the graduated sanctions scheme, a district court presented with one or more technical violations may consider a probationer's full violation history—including prior nontechnical probation violations—when deciding whether revocation is warranted, subject to abuse of discretion review. *Lewis*, 90 Nev. at 438, 529 P.2d at 797 (affirming district courts' “broad discretionary power” over these proceedings). In this case, the

district court did not abuse its discretion by considering McDaniel's prior nontechnical violations alongside the newly reported technical violations when determining that his conduct fell short of the terms of his probation. McDaniel had previously stipulated to being arrested twice for firearm possession, both category B felonies, and to being arrested for driving under the influence of alcohol and drugs; for these nontechnical violations, his probation had been temporarily revoked twice, for periods of six months and then, separately, for 30 days. When presented with the new technical violations in the September 2023 report, the district court properly considered those prior nontechnical violations and time served in jail as a result. And because revocation was warranted based on that holistic evaluation, we need not address whether the district court erred by finding additional nontechnical violations based on the text message evidence contained in the November 2023 report; that finding was not dispositive to the revocation decision.

D.

McDaniel's final argument that the district court should have credited him for 1,094 rather than 860 days of time served also fails. The district court did not err or abuse its discretion by denying him credit for time served after December 12, 2023, when the court in his separate illegal possession of a firearm case revoked his probation and sent him to prison pursuant to the judgment of conviction in that case. Under NRS 176.055(1), a defendant must receive credit for time spent in confinement before conviction "unless the defendant's confinement was pursuant to a judgment of conviction for another offense." *See White-Hughley v. State*, 137 Nev. 472, 474-75, 495 P.3d 82, 85 (2021) (holding that such credit is mandatory unless the stated exception applies). Although the district court in this case did not revoke McDaniel's probation and enter its third amended judgment of conviction executing its suspended sentence of imprisonment until July 22, 2024, he was

confined pursuant to the judgment of conviction in the other illegal possession of a firearm case on December 12, 2023.² Under the exception stated in NRS 176.055(1), this ended his entitlement to time-served credit after that date.

McDaniel complains that he did not cause the delays in resolving the probation violation charges in this case, making it unfair to tax him with loss of credit for time-served from December 12, 2023, to July 22, 2024. But as the State notes, this is not accurate—except for a 23-day delay caused by the Nevada Department of Corrections’ failure to transport McDaniel for one of the hearings, the time it took to resolve the probation revocation and time-credit issues presented was not the fault of the State. More to the point, McDaniel does not present persuasive authority or cogent argument to overrule the district court’s reading of NRS 176.055(1)’s plain terms. We therefore reject McDaniel’s argument that he was entitled to additional credit for time served beyond the 860 days he was given. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (requiring citation of persuasive authority and cogent argument in support of position).

III.

Although the applicability of a new criminal statute or amendment typically depends on whether the offense occurred before the statute took effect, the graduated sanctions scheme enacted in NRS 176A.510 and 176A.630

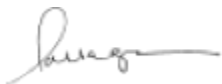
²McDaniel seeks an additional 234 days’ credit, claiming he is entitled to 1094 days instead of the 860 days he was granted; this is 12 days more than the 222 days between December 12, 2023, and July 22, 2024. We also note that the court of appeals recently reversed and remanded the probation revocation order and judgment of conviction in the illegal possession of a firearm case. *McDaniel v. State*, No. 87927-COA, 2026 WL 1642208 (Nev. Ct. App. June 5, 2026). Since the parties do not address the math issue or the potential impact of the court of appeals’ decision on McDaniel’s time-served credit, we do not do so either.

regulates probation administration and applies to all sentencing moving forward from its effective date in 2020. Because McDaniel was sentenced in 2022, the scheme applies to his probation and the district court erred when it held otherwise. That said, the graduated sanctions scheme does not prevent district courts from considering prior nontechnical violations alongside current technical ones. The district court thus did not abuse its discretion when it determined that revocation was warranted based on a holistic evaluation of the new technical violations contained in the September 2023 report and McDaniel's history of nontechnical violations. The district court also did not err when calculating how much time served to credit McDaniel after reinstating his original prison sentence. We thus affirm the district court order and the third amended judgment of conviction.



Pickering, J.

We concur:



Parraguirre, J.



Bell, J.