



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ISAIAH PERALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent,

No. 91726-COA

ISAIAH PERALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 92252-COA

ORDER OF AFFIRMANCE

Isaiah Perales appeals from an order for revocation of probation and amended judgment of conviction in district court case no. C-25-392381-1 (Docket No. 91726) and an order for revocation of probation and second amended judgment of conviction in district court case no. C-25-389179-1 (Docket No. 92252).¹ Eighth Judicial District Court, Clark County; Hon. Mary Kay Holthus, Judge, in Docket No. 91726; Hon. Christy Craig, Judge, in Docket No. 92252.

Perales was ordered to complete drug court, a specialty court program, as a condition of his probation in both of the above-referenced district court cases. In advance of a hearing to determine whether Perales should be terminated from drug court, a status hearing was conducted before the drug

¹We grant Perales's motions to consolidate the appeals filed in each case.

court, at which Perales appeared with counsel who later represented him at the termination hearing. At the status hearing, the hearing master notified Perales that she was remanding him into custody and setting the matter for a termination hearing before the drug court judge based on the allegations that Perales had been kicked out of the Crossroads program for behavioral issues; that Perales was told to go to the Courtyard program but went somewhere else instead; and that Perales let his GPS monitoring device die so his location could not be monitored. The hearing master further notified Perales that the drug court judge would hear evidence before deciding whether to terminate Perales from drug court. The hearing master also notified Perales that he would be represented by counsel during the termination hearing and would be able to speak with counsel about the arguments he wanted to make at the termination hearing.

At the beginning of the termination hearing before the drug court judge, the assigned drug court coordinator recounted for the court the allegations supporting the State's recommendation to terminate Perales from drug court. The coordinator explained that Perales had multiple issues with unwanted altercations, activities, and behaviors while at the Crossroads program and was told that any further issues would result in his discharge. Perales had another verbal altercation with another person, and the coordinator explained that Perales was then discharged from Crossroads and was sent to the Courtyard program with instructions to meet with personnel there. However, instead of going to Courtyard, Perales disappeared. Prior to his GPS monitoring device dying, it showed Perales was at an unauthorized location. In summary, the coordinator explained that the grounds for seeking termination from drug court were Perales's behaviors leading to discharge from Crossroads; his failure to go to Courtyard; his letting

the GPS device battery die; and his being at an unauthorized location. These allegations were substantially the same allegations Perales was notified of by the hearing master at the drug court status hearing. The coordinator also said that she had reports related to the allegations and copies of the behavior contracts Perales violated. Neither Perales nor his counsel stated that they were denied those documents or that they were unfamiliar with their contents or the allegations.

Following the coordinator's recitation of the allegations, the drug court gave Perales the opportunity to address the court. Perales did not deny or otherwise challenge the allegations. Instead, Perales stated that he understood the ramifications of what he had done and asked for another chance. Perales explained that the day before he had been remanded into custody, he had checked himself in at Freedom House and stated he thought he would do better in an all-male treatment program. Perales's counsel then addressed the court. Counsel did not deny the allegations or otherwise challenge any alleged lack of due process in the drug court proceedings. Instead, counsel argued that Perales should be allowed to remain in drug court because, following his disappearance, he had reached out to Crossroads staff to get back into the program and was sent to detox and then to Freedom House, which Perales checked himself into before being remanded into custody. The drug court stated that Perales's "problem is behavioral" and that he had offended, threatened, and made unwanted advances at people. Based on this, the court stated it was going to follow the State's recommendation to terminate Perales from drug court and ordered that his cases be sent back to the respective district courts.

After Perales was terminated from drug court, the State sought revocation of Perales's probation in each of his respective district court cases

on the grounds that failing to complete drug court constituted a nontechnical violation of Perales's probation. Perales then challenged his termination from drug court before each of the respective district courts, alleging he had been denied due process. The district court in Docket No. 91726 reviewed the drug court record and determined the State met its burden of proving Perales's probation should be revoked based on his termination from drug court. Although the court gave Perales an opportunity to present evidence and call witnesses to demonstrate whether revocation was appropriate, including the ability to present information regarding the underlying circumstances resulting in his termination from drug court, he declined to do so. The court determined Perales violated the conditions of his probation based on his termination from drug court, revoked his probation, and imposed the underlying suspended sentence.

In Docket No. 92252, the district court allowed the parties to brief whether the court had the authority to remand the matter to the drug court for further termination proceedings. Perales conceded he was unaware of any law providing for such authority. The district court asked Perales during the revocation hearing if he was going to present any witnesses, and he said he was not. Ultimately, the court took judicial notice of the fact that Perales had been terminated from drug court and based its revocation decision on his termination. The court determined Perales violated the conditions of his probation based on his termination from drug court, revoked his probation, and imposed the underlying suspended sentence.

On appeal, Perales first argues that he was denied due process during drug court termination proceedings. Perales did not raise this issue before the drug court. Thus, Perales's claim was forfeited. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (considering a claim of

constitutional error and holding that the failure to preserve an error, even structural error, forfeits the right to raise the claim on appeal); *cf. Miller v. State*, 121 Nev. 92, 98-99, 110 P.3d 53, 57-58 (2005) (observing that the purpose of a timely objection is to call attention to an alleged error the objecting party takes issue with and to allow the trial-level court to contemporaneously address the error or any prejudice at a time when it can be corrected). Even reviewing for plain error, Perales's claim fails. To demonstrate plain error, Perales must show that "(1) there was an 'error'; (2) the error is 'plain,' meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected [his] substantial rights." *Jeremias*, 134 Nev. at 50, 412 P.3d at 48 (internal quotation marks omitted). Because Perales cites only out-of-jurisdiction legal authority to support his argument regarding the due process protections afforded to persons during drug court termination proceedings, he fails to demonstrate any error that is clear under current law from a casual inspection of the record. Therefore, we conclude Perales fails to demonstrate he is entitled to relief based on this claim.

Perales also argues the district courts revoked his probation without first providing the due process protections required by *Anaya v. State*, 96 Nev. 119, 606 P.2d 156 (1980). 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. *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). "Parole and probation revocations are not criminal prosecutions; the full panoply of constitutional protections afforded a criminal defendant does not apply." *Anaya*, 96 Nev. at 122, 606 P.2d at 157. A district court may revoke probation without graduated sanctions if it "finds that the probationer committed a violation of a condition of probation that is not a technical violation." NRS 176A.630(1)(a); *see Lewis*, 90 Nev. at 438, 529 P.2d at 797

(providing that 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).

Here, while Perales challenged the drug court termination proceedings before the respective district courts, he did not dispute that he was terminated from drug court, and the record demonstrates that he was so terminated. *See Anaya*, 96 Nev. at 122, 606 P.2d at 157 (“Due process requires, at a minimum, that a revocation be based upon verified facts so that the exercise of discretion will be informed by an accurate knowledge of the probationer’s behavior.” (quotation marks and alteration omitted)). Both district courts relied on the drug court record demonstrating Perales’s termination in determining that Perales violated the conditions of his probation. *Cf. id.* at 123-24, 606 P.2d at 158-59 (providing that an arrest report introduced at a probation revocation hearing is considered “prima facie evidence of the facts it contains” but its presumptive reliability “becomes more questionable” when the “accuracy of the facts alleged is challenged by the probationer”).

Based on Perales’s termination from drug court and the plain language of NRS 176A.510(8)(c), which defines “technical violation” of probation and provides “[t]he term does not include termination from a specialty court program,” the district courts addressing Perales’s probation violation could reasonably conclude that Perales committed a non-technical violation of his probation and could revoke his probation based on a determination that his conduct was not as good as required by the terms of his probation. In light of the respective district courts’ reliance on evidence demonstrating Perales’s termination from drug court, the fact that Perales was represented by counsel during both revocation proceedings, and the fact that

Perales had the ability to present evidence during those proceedings, we conclude the courts did not deny Perales due process before revoking his probation. Therefore, we conclude Perales fails to demonstrate the district courts' revocation of his probation constituted an abuse of discretion.

For these reasons, we

ORDER the order for revocation of probation and amended judgment of conviction in Docket No. 91726 and the order for revocation of probation and second amended judgment of conviction in Docket No. 92252 AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Mary Kay Holthus, District Judge
Hon. Christy Craig, District Judge
Office of the Attorney General
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk