IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH L. HALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38649

FILED

AUG 21 2002

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's petition for a writ of mandamus. Appellant was originally convicted, pursuant to a guilty plea, of one count of child abuse and neglect. The district court sentenced appellant to 6 months in jail, suspended the sentence, and placed appellant on probation for a period not to exceed 2 years. The judgment of conviction was entered on May 2, 2001.

After sentencing, appellant reported to the Division of Parole and Probation (Division) and signed the probation agreement, which contained the general conditions for probation as provided by NRS 176A.400, and the special conditions of probation that were delineated in the judgment of conviction. The order admitting appellant to probation was entered by the district court on May 2, 2001.

Subsequently, appellant filed a motion for an order directed to the Division or alternatively, a petition for a writ of mandamus. Appellant challenged the conditions of probation that restricted his right to travel, his right to association, and his right to bear arms.[1] On October 9, 2001,

[1]Appellant also challenged the requirement that he enter a counseling program. The district court granted relief as to this challenge, and that request is therefore not at issue in this appeal.

the district court entered an order amending the order admitting appellant to probation.

Appellant first contends that the Division had no right to impose additional conditions of probation in the probation agreement. In a related argument, appellant contends that the district court violated his right to due process by signing the order admitting defendant to probation, which contained the conditions of probation, thereby modifying the terms of his sentence.

Initially, we note that the probation agreement did not impose any additional conditions of probation, it merely listed the general conditions of probation contained in NRS 176A.400. Appellant points to no authority, and we are aware of none, that requires every condition of probation to be contained in the judgment of conviction. Accordingly, appellant's first two contentions are without merit, because no additional conditions were imposed and the terms of appellant's sentence were not modified. Moreover, NRS 176A.450(1) provides that the district court may modify the conditions of probation at any time.

Appellant next contends that the district court breached the plea agreement by signing the order admitting appellant to probation. In particular, appellant argues that the general conditions of probation were not part of the plea negotiations. The district court is not bound, however, by the plea agreement as to matters of sentencing, and appellant acknowledged as much in the plea agreement.

Finally, appellant contends that he was denied his right to counsel when he was forced to sign the probation agreement without the assistance of counsel. Appellant's contention is based on a flawed premise. Appellant states that a criminal defendant is entitled to representation of counsel at all phases of a criminal prosecution. Actually, defendants are

entitled to legal counsel during "critical stages" of a criminal prosecution.[2] Appellant cites no authority, and makes no argument, for the proposition that a probation intake interview is a critical stage of a criminal prosecution. We therefore conclude that appellant had no right to counsel at the intake interview.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Valorie Vega, District Judge
James J. Ream
Attorney General/Carson City
Attorney General/Las Vegas
Clark County Clerk

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[2]Kirby v. Illinois, 406 U.S. 682, 690 (1972).