

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLEN LOUIS TOMKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38889

FILED

SEP 09 2002

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court revoking appellant Allen Louis Tomko's probation. On February 8, 2000, Tomko was convicted, pursuant to a guilty plea, of possession of a controlled substance. The district court sentenced Tomko to serve a term of 12 to 48 months in the Nevada State Prison. The district court then suspended execution of Tomko's sentence and placed him on probation for a period not to exceed 3 years.

Tomko violated the terms of his probation by testing positive for methamphetamine on more than one occasion. Tomko waived a hearing and admitted the violation before the district court. The district court revoked his probation on November 19, 2001. Tomko contends that the district court abused its discretion in revoking his probation because he should not be punished for being a drug addict.<sup>1</sup>

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<sup>1</sup>Tomko relies on Robinson v. California, 370 U.S. 660 (1962), a case in which the Supreme Court invalidated a statute making it a crime to be "addicted to the use of narcotics" but upheld the statute's criminalization of the "use" of narcotics. Id. at 664. We note that Tomko admitted to using methamphetamine while on probation. We also note that Robinson does not apply to the instant case because "[p]arole and probation revocations are not criminal prosecutions; the full panoply of constitutional protections afforded a criminal defendant does not apply." Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (citing Gagnon


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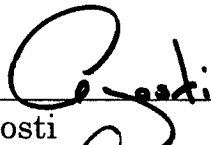
The decision to revoke probation is within the broad discretion of the district court, and will not be disturbed absent a clear showing of abuse.<sup>2</sup> Evidence supporting a decision to revoke probation must merely be sufficient to reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation.<sup>3</sup>

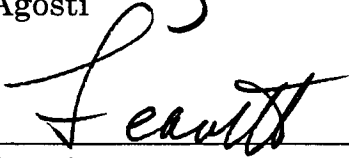
In this case, we conclude that the district court did not err in finding that Tomko's conduct was not as good as required. Specifically, the district court noted Tomko used controlled substances and did not cooperate with his biweekly drug testing and counseling obligations. We conclude that the district court acted within its discretion in revoking Tomko's probation.

Having considered Tomko's contention and concluded it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

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*... continued*

v. Scarpelli, 411 U.S. 778 (1973) and Morrissey v. Brewer, 408 U.S. 471 (1972)).

<sup>2</sup>Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974).

<sup>3</sup>Id.

cc: Hon. William A. Maddox, District Judge  
State Public Defender/Carson City  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk