

IN THE SUPREME COURT OF THE STATE OF NEVADA

HECTOR CALDERON RAMIREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40854

FILED

MAR 05 2004

ORDER OF REVERSAL AND REMAND

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

This is an appeal from a district court order revoking appellant Hector Calderon Ramirez's probation.

On October 29, 2002, Ramirez was convicted, pursuant to a guilty plea, of one count of evading a police officer. The district court sentenced Ramirez to a prison term of 19 to 48 months, suspended execution of the sentence and placed him on probation for a time period not to exceed 2 years. On November 26, 2002, the State filed a notice of intent to seek revocation of Ramirez' probation.

On December 30, 2002, the district court conducted a probation revocation hearing. At the hearing, Officer Abeyta, a Spanish-speaking parole and probation officer, testified that he went to speak with Ramirez, who was in custody at the North Las Vegas Jail pending admission to probation. Officer Abeyta testified that he read the probation agreement to Ramirez because Ramirez could not read English. Officer Abeyta also testified that Ramirez believed the sentence was wrong and requested a copy of the agreement in Spanish or, alternatively, that the court interpreter translate it for him. Officer Abeyta refused to provide Ramirez with a Spanish-language version of the probation agreement and told him that if he did not sign the English-language version of the agreement, his probation would be revoked. Ramirez did

not sign the probation agreement and also did not submit to DNA testing. Ultimately, the district court revoked Ramirez' probation. Ramirez filed the instant appeal, contending that the district court abused its discretion in revoking his probation. We agree.¹

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

Under the unique facts of this particular case, we conclude that the district court erred in revoking Ramirez' probation. Ramirez did not violate a condition of his probation by merely requesting a Spanish-language version of the probation agreement. In the proceedings below, it was undisputed that Ramirez could not read the English-language version of the agreement and requested the Spanish-language version because he was concerned about the accuracy of the sentence. In light of the fact that Ramirez was required to sign the form acknowledging that he read it, and the fact that a Spanish-language version was available, his request for that document was neither unreasonable nor an indication that he would not comply with the conditions of his probation. Likewise, the fact that a federal agency placed a deportation hold on Ramirez is an insufficient

¹Because we conclude that the district court abused its discretion in revoking Ramirez' probation, we decline to consider his remaining contention regarding a purported violation of his constitutional rights.

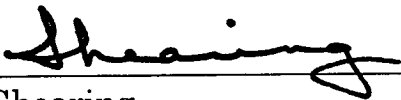
²Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974).

³Id.

basis to revoke his probation.⁴ Although Ramirez' refusal to submit to DNA testing would have arguably been sufficient grounds to revoke his probation, there is no indication in the record that Ramirez would have refused the DNA test if he had been provided with a Spanish-language probation agreement. Because there was insufficient evidence presented that Ramirez violated a condition of probation, we conclude that the district court erred in revoking his probation.

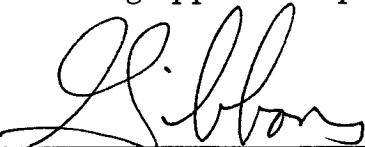
Having considered Ramirez' contention and concluded that it has merit, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Shearing


_____, J.
Becker

I dissent. I do not believe that the district court abused its discretion in revoking appellant's probation.


_____, J.
Gibbons

⁴See generally People v. Cisneros, 100 Cal. Rptr. 2d 784, 788 (Ct. App. 2000) (recognizing that illegal alien status "does not categorically preclude a grant of probation").

cc: Hon. Joseph T. Bonaventure, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk