

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH FRANCIS WHITE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41230

FILED

SEP 19 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court revoking appellant Kenneth Francis White's probation.

On January 7, 2003, the district court convicted White, pursuant to a guilty plea, of one count of failure to register as a sex offender. The district court sentenced White to serve a prison term of 12 to 32 months, and then suspended execution of the sentence and placed White on probation for a period not to exceed 18 months.

On February 12, 2003, the Division of Parole and Probation filed a violation report against White, alleging he violated three conditions of his probation. Specifically, the Division contended that White: (1) missed an appointment with his probation officer; (2) failed to provide the Division with his correct address; and (3) violated the laws and conduct provision due to his recent arrest for misdemeanor assault.<sup>1</sup>

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<sup>1</sup>The assault charge arose from an incident where White confronted an individual with a butter knife.

On March 7, 2003, the district court conducted a probation revocation proceeding. After hearing arguments from counsel, the district court entered an order revoking White's probation and executing the sentence originally imposed. White subsequently filed a motion for reconsideration in the district court. The State opposed the motion. On April 4, 2003, the district court conducted a hearing on White's motion. After hearing arguments from counsel, the district court denied White's motion. White filed this timely appeal.

White contends that the district court abused its discretion in revoking his probation because there was insufficient evidence presented that he violated the conditions of his probation. In particular, White alleges that, at the probation revocation hearing, he did not admit the violations against him, he was not allowed to speak on his own behalf, and the State did not present any witnesses in support of the allegations made in the violation report. We conclude that the district court did not abuse its discretion in revoking White's probation.

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>

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

<sup>3</sup>Id.

Here, the record of the probation revocation hearing indicates that there was sufficient evidence in support of the district court's decision to revoke White's probation. At the hearing, defense counsel spoke on White's behalf.<sup>4</sup> Defense counsel essentially admitted that White violated the conditions of his probation but offered an explanation in mitigation for each incident. In particular, defense counsel admitted that White missed his February 10th appointment with his probation officer, but explained that White could not make the appointment because he had been arrested. Additionally, defense counsel admitted that White did not reside at the address he gave to the Division, but explained the address was to a trailer owned by White's employer, which White believed he was going to live in. Apparently, White's employer did not allow White to stay in the trailer, and White was residing with a friend until he could find a permanent address to report to the Division. Finally, defense counsel admitted that White was arrested for misdemeanor assault, but explained that White assaulted the individual in self-defense, after the individual struck him in the face and took his wallet. Because there was sufficient evidence that White engaged in conduct that violated the conditions of his probation, the district court did not abuse its discretion in revoking his probation.

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<sup>4</sup>White's counsel stated: "Your honor, we are in receipt of the violation report dated February 12th, 2003. I have gone over the violation report with my client. Mr. White has discussed the violations with me. I'm going to just take them one by one, Your Honor, as they're listed in the report."

Additionally, White contends that his right to due process was violated because the district court did not allow White to testify at the probation revocation proceeding, as required by Anaya v. State.<sup>5</sup>

Preliminarily, we note that White failed to preserve this issue for appeal because White did not object at the probation revocation proceeding on the grounds that his right to due process was violated. The failure to raise an objection with the district court generally precludes appellate consideration of an issue.<sup>6</sup> This court may nevertheless address an alleged error if it was plain and affected the appellant's substantial rights.<sup>7</sup> We conclude that no plain error occurred here.

"Parole and probation revocations are not criminal prosecutions; the full panoply of constitutional protections afforded a criminal defendant does not apply."<sup>8</sup> As discussed above, White had an opportunity to respond to the allegations that he violated his probation, and defense counsel, on White's behalf, offered explanations in mitigation for each violation. Although White notes that, pursuant to Anaya, a probationer has a due process right to "appear and speak on his own

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<sup>5</sup>96 Nev. 119, 606 P.2d 156 (1980).

<sup>6</sup>See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997).

<sup>7</sup>See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

<sup>8</sup>Anaya, 96 Nev. at 122, 606 P.2d at 157.

behalf," White never requested to testify at the probation revocation proceeding, but instead deferred to his counsel. Further, at the hearing on White's motion for reconsideration of the probation revocation order, defense counsel informed the district court that White had agreed to waive his appearance in district court. Accordingly, we conclude that White was afforded sufficient due process.

Finally, White contends that his right to equal protection was violated because the district court revoked White's probation, in part, because he was poor and homeless. We conclude that White's contention lacks merit.

Preliminarily, we note that the district court did not consider the fact that White was poor or homeless at the original probation revocation hearing. At that hearing, the colloquy between defense counsel and the district court about White's residence concerned the fact that White had reported a false address to the Division. Although, at the hearing on White's motion for reconsideration of the revocation order, the district court made a passing reference to the fact that White was homeless, the district court expressly stated that it revoked White's probation "based on the allegations made in the violation report."<sup>9</sup> We therefore conclude White has failed to show that his probation was revoked because he was poor and homeless.

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<sup>9</sup>See generally Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998) (noting that a mere passing reference to a defendant's status does not provide sufficient grounds to disturb a district court's sentencing determination).

Having considered White's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.  
Becker

Shearing, J.  
Shearing

Gibbons, J.  
Gibbons

cc: Hon. Steven R. Kosach, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk