

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT ALLEN PETRELLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 1297

FILED

AUG 20 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court revoking appellant Scott Allen Petrella's probation.

On October 28, 2002, Petrella was convicted, pursuant to a guilty plea, of one count of burglary and two counts of grand larceny. The district court sentenced Petrella to serve concurrent prison terms of 16-60 months for the burglary and 16-48 months for each of the grand larceny counts; he was ordered to pay \$28,252.09 in restitution jointly and severally with his codefendant. The district court suspended execution of the sentence and placed Petrella on probation with several conditions for an indeterminate period not to exceed 5 years. On March 18, 2003, after conducting a hearing on the matter, the district court entered an order revoking Petrella's probation. This appeal followed.

Petrella contends that the district court abused its discretion by revoking his probation. Petrella concedes that he violated the terms of his probation by leaving the State for several months without the permission of his probation officer, however, he argues that the sentence

imposed constitutes cruel and unusual punishment in violation of the federal and state constitutions.¹ We disagree with Petrella's contention.

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

In this case, Petrella is unable to demonstrate that the district court abused its discretion. Petrella does not dispute that he violated the terms of his probation by leaving the State for several months without the permission of his probation officer. Therefore, we conclude that the district court acted within its discretion when it revoked Petrella's probation.⁴

Further, Petrella has waived his right to challenge the severity of his sentence by failing to pursue the matter in a direct appeal.⁵

¹See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. Petrella relies on Solem v. Helm, 463 U.S. 277 (1983), for support.

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

³Id.

⁴See generally McNallen v. State, 91 Nev. 592, 540 P.2d 121 (1975) (revocation of probation affirmed where violation by probationer not refuted).

⁵See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979

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Although the district court's order is entitled, "Order for Revocation of Probation and Amended Judgment of Conviction," the order does not, in fact, amend the judgment of conviction, but instead merely revokes Petrella's probation. Moreover, we have reviewed the record on appeal and conclude that the sentence imposed by the district court does not constitute cruel and unusual punishment.⁶ Petrella does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional.⁷ We also note that the sentence imposed was within the parameters provided by the relevant statutes.⁸ Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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P.2d 222 (1999) (holding that "claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings").


⁶Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (holding that Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime).


⁷Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); see also Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

⁸See NRS 205.060(2); NRS 205.222(2); NRS 193.130(2)(c).

Having considered Petrella's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk