

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL B. JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42272

FILED

FEB 12 2004

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 Michael B. Jones' term of probation.

On March 29, 2001, Jones was convicted, pursuant to a guilty plea, of one felony count of drawing and passing a series of checks within a 90-day period with the intent to defraud. The district court sentenced Jones to a prison term of 19-48 months, and then suspended execution of the sentence and placed him on a term of probation for an indeterminate period not to exceed 40 months.¹ Jones was ordered to pay \$6,681.49 in restitution.

Jones contends that the district court abused its discretion and violated his right to equal protection when it revoked his term of probation and reinstated the original suspended sentence. Jones concedes that he complied with all of the terms of his probation except for the payment of restitution and supervision fees because of his limited income. Jones argues that to revoke his probation based on his failure to pay is "discrimination against the indigent." We disagree with Jones' contention.

¹The district court ordered the sentence to run consecutively to the sentence imposed in district court case no. CR98-0820.

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, Jones is unable to demonstrate that the district court abused its discretion or violated his right to equal protection. The district court conducted a hearing and heard from Jones, his counsel, and his probation officer. Jones provided documentation from his employer indicating that he earned approximately \$900.00 a month. The probation officer informed the district court that even though Jones had complied with other terms of his probation, he had not made a good faith effort to make the required payments despite being told to do so numerous times. At the urging of defense counsel, the district court decided to continue the revocation proceeding for six months, finally stating to Jones, "If you're able to show that you're making [a] good faith effort to pay the restitution, that's fine. But if – if you're just not paying the restitution and you're out free, that isn't paying your debt to society."

On October 9, 2003, the district court resumed the hearing on the State's motion to revoke Jones' probation. The district court was informed by Jones' probation officer that he had not made one payment during the past six months. The district court also heard again from counsel and from Jones, and ultimately revoked his term of probation.

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

³Id.

Based on all of the above, we conclude that the district court acted within its discretion when it revoked Jones' probation.⁴

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

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

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

⁴See generally Burke v. State, 96 Nev. 449, 452, 611 P.2d 203, 204 (1980) (“a state may constitutionally imprison ‘a defendant with the means to pay a fine who refuses or neglects to do so’”) (quoting Tate v. Short, 401 U.S. 395, 400 (1971)); see also McNallen v. State, 91 Nev. 592, 540 P.2d 121 (1975) (revocation of probation affirmed where violation by probationer not refuted).