

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY SINCLAIR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42563

FILED

AUG 23 2004

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court revoking appellant's probation. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Appellant was originally convicted, pursuant to a guilty plea, of one count of statutory sexual seduction. The district court sentenced appellant to a prison term of 12 to 32 months. The district court suspended the sentence, placing appellant on probation for a term not to exceed 3 years. The judgment of conviction was entered on April 21, 2003.

On July 8, 2003, the Division of Parole and Probation (P&P) filed a violation report, alleging that appellant: (1) had violated the condition prohibiting the use of intoxicants; (2) had failed to pay monthly supervision fees in the amount of \$30 per month; and (3) had been staying in a downtown hotel rather than at his home, thereby violating the condition that he get permission should he change his residence. P&P further alleged that appellant had violated his curfew.

The district court conducted a revocation hearing on September 3, 2003. The district court specifically found that there were sufficient facts to revoke appellant's probation. Nonetheless, the district court reinstated appellant's probation "with the added condition that within thirty days you are to be current on your counseling fees. You are

to attend the weekly counseling, and if you miss more than one of those over every 90-day period, then P&P is authorized to bring you back and at that time you will just be revoked." The counseling fees totaled \$105.00.

On October 16, 2003, P&P filed another violation report, alleging that appellant: (1) had not been staying at his home since approximately October 3, 2003; (2) had been found with what was believed to be a crack pipe in his shirt pocket; (3) had still not made any supervision fee payments; (4) admitted that he had violated his curfew "about ten times"; and (5) had not paid his counseling fees or started his counseling.

The district court conducted a revocation hearing on November 10, 2003. At the hearing, appellant conceded that he had not paid the counseling fees, nor had he attended any counseling sessions since the September revocation hearing. Appellant further informed the district court that, despite working two or three part-time jobs, he "didn't have the money to pay at that time." Appellant explained that he chose instead to pay some bills that were in his cousin's name, because appellant had signed a power of attorney to allow his cousin to handle matters relating to appellant's house. Upon further questioning from the district court, appellant admitted that he had not explained these circumstances to his probation officer.


The district court specifically found that appellant had the means to pay the counseling fees, but that he chose not to do so. The district court therefore revoked appellant's probation.

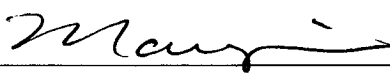
Appellant contends that the district court abused its discretion in revoking his probation based on his failure to pay \$105.00 in counseling fees. Specifically, appellant argues that he is indigent and it was therefore

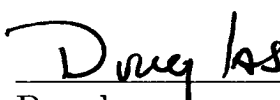
unconstitutional to revoke his probation for failure to pay the fees. Appellant relies on the United States and Nevada Constitutions, arguing that revocation under these circumstances violates the Equal Protection Clauses, the Due Process Clauses, and the proscriptions against excessive fines.

The district court found, however, that appellant failed to make a good faith attempt to pay the counseling fees and that appellant's failure was not caused by economic hardship. These findings are entitled to deference and, based on our review of the record, are not clearly erroneous.¹ We therefore conclude that appellant's contention is without merit, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

¹See Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974) (revocation of probation is within district court's broad discretion and its decision will not be disturbed absent abuse of discretion); see also Gilbert v. State, 99 Nev. 702, 708, 669 P.2d 699, 703 (1983) (holding that a defendant may be imprisoned for failure to pay a fine where the defendant willfully fails to pay or refuses to make a good faith effort to pay).

cc: Hon. Nancy M. Saitta, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk