

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY ALLEN ARCHIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54527

ANTHONY ARCHIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54533

FILED

MAY 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE (DOCKET NO. 54533) AND REVERSAL AND
REMAND (DOCKET NO. 54527)

These are consolidated appeals from orders revoking probation and amended judgments of conviction. Eighth Judicial District Court, Clark County; Valerie Adair, Judge (Docket No. 54527); Eighth Judicial District Court, Clark County; Donald Mosley, Judge (Docket No. 54533). Appellant argues that revocation of his probation in two cases was improper.

Appellant pleaded guilty to battery with the use of a deadly weapon (Docket No. 54533), and the district court granted probation. While on probation, he was charged with carrying a concealed firearm or deadly weapon (Docket No. 54527). In light of the weapon charge, the district court ordered appellant "reinstated on probation, provisionally" but noted that revocation may be revisited should he be convicted of the weapon charge. Subsequently, appellant pleaded guilty to carrying a

concealed firearm or deadly weapon and was granted probation. Thereafter, appellant was discovered riding in a vehicle with a member of a criminal gang, in violation of a condition of probation in both cases. The State sought to revoke appellant's probation on both the battery and concealed weapon convictions. After hearings, appellant's probation was revoked in each case. Appellant challenges each of the probation revocations as improper.

Docket No. 54533

As to appellant's battery conviction, he argues that the district court erroneously revoked his probation because (1) there was insufficient evidence that he violated a condition of no gang involvement and (2) the district court improperly considered his conviction for concealing a weapon in revoking his probation.

As to appellant's sufficiency argument, counsel conceded at the revocation hearing that appellant was in a car with an individual who had a history of gang involvement and appellant admitted to the district court that he "was told not to have any association with gangs." Despite appellant's explanation that he was in the car with the gang member on the way to a family wedding, we conclude that the evidence sufficiently showed that his behavior was "not as good as required by the conditions of probation." Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974).

As to appellant's remaining challenge, he argues that he was not provided notice that his concealed weapon conviction would be considered at the hearing. Appellant is correct, but we nevertheless conclude that the district court did not err in considering the concealed weapon conviction. Not possessing weapons or firearms was part of appellant's probation and he was aware when he was placed on

provisional probation that a conviction on the concealed weapon charge could result in revisiting revocation. See Jaegar v. State, 113 Nev. 1275, 1282-83, 948, P.2d 1185, 1190 (1997).

We conclude that the district court did not clearly abuse its discretion in revoking appellant's probation on the grounds he asserts. Lewis, 90 Nev. at 438, 529 P.2d at 797.

Docket No. 54527

As to appellant's concealed weapon conviction, he contends that the district court improperly revoked his probation on the ground that the Department of Parole and Probation could not supervise him considering the revocation of his probation on the battery conviction and impending incarceration. We agree.

To meet due process concerns, the district court was obligated to determine whether appellant violated the conditions of probation as alleged and whether revocation was appropriate. See NRS 176A.630; see generally Anaya v. State, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) ("Due process requires, at a minimum, that a revocation be based upon 'verified facts' so that 'the exercise of discretion will be informed by an accurate knowledge of the (probationer's) behavior.'" (quoting Morrissey v. Brewer, 408 U.S. 471, 484 (1972))). Here, rather, the district court revoked appellant's probation solely because appellant's probation had been revoked in another case. We conclude that the district court's decision did not meet minimum due process concerns. Therefore, we reverse the judgment of the district court and remand this matter for a new probation revocation hearing.

Having considered appellant's claims, we

ORDER the judgment of the district court in Docket No. 54533
AFFIRMED AND REVERSE the judgment of the district court in Docket
No. 54527 AND REMAND this matter to the district court for proceedings
consistent with this order.

Hardesty, J.
Hardesty

Pickering, J.
Pickering

DOUGLAS, J., concurring:

In an appropriate case, I would be inclined to reconsider the
breadth of Jaegar as to notice. But because the gang violation was
sufficient for revocation in Docket No. 54533, I concur.

Douglas, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Hon. Valerie Adair, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk