

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY MONTGOMERY COOPER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 60027

FILED

OCT 08 2012

TRACIE K. LINDEMAN  
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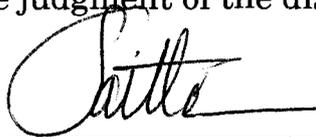
ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking appellant Barry Montgomery Cooper's probation and an amended judgment of conviction. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Cooper contends that the district court abused its discretion by revoking his probation because he was "substantially complying with probation prior to a relapse that resulted in him drinking alcohol." The district court's decision to revoke probation will not be disturbed absent an abuse of discretion. Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). At the revocation hearing, Cooper conceded that he failed to comply with the conditions of his probation. See generally McNallen v. State, 91 Nev. 592, 540 P.2d 121 (1975) (revocation of probation affirmed where violation by probationer not refuted). The district court noted that "it would be doing a disservice in terms of the community, in these circumstances to give another opportunity here" and found that Cooper's conduct was not as good as required by the conditions of his probation. See Lewis, 90 Nev. at 438, 529 P.2d at 797. We conclude that the district court did not abuse its discretion by revoking Cooper's probation.

Cooper also contends that the sentence imposed by the district court is disproportionate to the offense and amounts to cruel and unusual punishment.<sup>1</sup> Cooper's claim is not properly raised in this appeal. The amended judgment of conviction revokes Cooper's probation and merely reinstates the sentence imposed in the original judgment of conviction filed more than a year and a half earlier. Cooper waived his right to challenge the severity of his sentence by failing to pursue the matter in a direct appeal. See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (“[C]laims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings.”), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Therefore, we conclude that Cooper is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Saitta



Pickering



Hardesty

cc: Hon. Kathleen E. Delaney, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>1</sup>In district court case no. C252080, Cooper pleaded guilty to theft and was sentenced to an underlying prison term of 24-60 months.