

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW DAVID WARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73748

FILED

APR 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Matthew David Ward appeals from a district court order revoking probation and an amended judgment of conviction. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

First, Ward argues the district court erred by revoking his probation based solely on hearsay evidence presented at the revocation hearing. At the probation revocation hearing, Ward's probation officer testified she accompanied Ward as he attempted to pay restitution in another criminal matter, but the Division of Parole and Probation's fees window refused to accept Ward's check. The officer and Ward then traveled to a Wells Fargo branch, the company listed on the check as its issuer, and employees of Wells Fargo informed her the check was fraudulent. Based on this testimony, the district court concluded Ward violated the terms of his probation and revoked probation.

In support of his claim, Ward relies primarily on *Anaya v. State*, 96 Nev. 119, 606 P.2d 156 (1980), but, unlike the appellant in that case, he did not object to the probation officer's testimony on due process or hearsay

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grounds. *Id.* at 121, 606 P.2d at 157. Thus, Ward has the burden to demonstrate plain error. See *Browning v. State*, 124 Nev. 517, 533, 188 P.3d 60, 71 (2008). “In conducting plain error review, we must examine whether there was error, whether the error was plain or clear, and whether the error affected the defendant’s substantial rights.” *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted).


Here, the record reveals the probation officer witnessed Ward attempt to pay restitution with the check and her personal investigation revealed the fraudulent nature of the check. Recognizing hearsay may be allowed at a probation violation hearing in certain circumstances, see NRS 47.020(3)(c); *Anaya*, 96 Nev. at 122-24, 606 P.2d at 157-59, we conclude Ward has not shown error affecting his substantial rights, see *United States v. Olano*, 507 U.S. 725, 734 (1993) (An error that affects substantial rights is one that “affected the outcome of the district court proceedings.”)

Second, Ward argues the district court erred by revoking his probation for issues stemming from nonpayment of restitution when he was not ordered to pay restitution in this case. We review the district court’s decision to revoke probation for abuse of discretion. *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). The record demonstrates the district court concluded Ward violated the terms of his probation by uttering a fraudulent check to the Division of Parole and Probation. This action violated Ward’s probation condition directing him to comply with all laws. Accordingly, the record supports the district court’s conclusion that Ward’s conduct was not as good as required by the conditions of his probation. See *id.* Under these circumstances, we conclude Ward has not demonstrated

the district court abused its discretion when revoking probation.
Accordingly, we

ORDER the order revoking probation and amended judgment
of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Eric Johnson, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk