

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY CORTEZ-MANARITE, A/K/A
ANTHONY CORTEZMANARITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75088-COA

FILED

JUN 19 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Cortez-Manarite appeals from a second amended judgment of conviction entered pursuant to a guilty plea of attempt to carry a concealed firearm or other deadly weapon.¹ Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Cortez-Manarite claims the district court erred by finding he violated the conditions of his probation. He argues that he was deprived of his due process right to confront the witnesses giving adverse information at the revocation hearing. And he asserts the district court based its probation violation decision on hearsay evidence rather than verifiable facts.

“[A] probationer has a due process right to confront and question witnesses giving adverse information at the formal revocation hearing.” *Anaya v. State*, 96 Nev. 119, 123, 606 P.2d 156, 158 (1980). To

¹We conclude Cortez-Manarite’s appeal is not moot and deny the State’s motion to dismiss. *See Knight v. State*, 116 Nev. 140, 143, 993 P.2d 67, 70 (2000); *Arterburn v. State*, 111 Nev. 1121, 1124 n.1, 901 P.2d 668, 670 n.1 (1995).

determine whether the admission of hearsay evidence violates the probationer's right to confrontation, the district court "must exercise its sound discretion after carefully considering the respective interests of the probationer and the State, the purpose for which the evidence is offered, and the nature and quality of that evidence." *Id.* at 125, 606 P.2d at 160. "A due process violation at a revocation proceeding is subject to harmless error analysis." *United States v. Havier*, 155 F.3d 1090, 1092 (9th Cir. 1998).


The record demonstrates the only witness giving adverse information at Cortez-Manarite's revocation hearing was a police officer who responded to a domestic violence call at a family residence and arrested Cortez-Manarite for domestic battery. The officer testified as to what Cortez-Manarite's father, mother, and sisters told him. The officer testified that Cortez-Manarite admitted that he kicked his father in the chest. And the officer was cross-examined by Cortez-Manarite during the course of this hearing.


We conclude any error in admitting the hearsay evidence as to what Cortez-Manarite's family told the officer was harmless beyond a reasonable doubt. Cortez-Manarite's own statement that he kicked his father in the chest was admissible, *see* NRS 51.035(3)(a), and it was sufficient to reasonably satisfy the district court that Cortez-Manarite's conduct was not "as good as required by the conditions of probation," *see Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). Moreover, even though the district court found that Cortez-Manarite had violated the conditions of his probation, it nevertheless ordered his probation reinstated.

Having concluded Cortez-Manarite is not entitled to relief, we

ORDER the second amended judgment of conviction
AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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