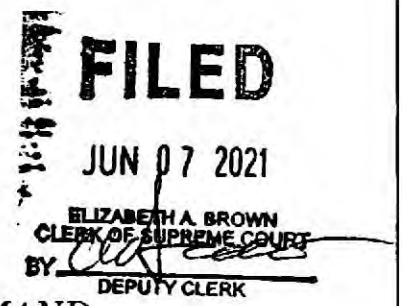
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAVION DARNELLE HUNT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81819-COA



ORDER OF REVERSAL AND REMAND

Javion Darnelle Hunt appeals from a second amended judgment of conviction. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Hunt was convicted, pursuant to a guilty plea, of attempted carrying a concealed firearm. The district court sentenced Hunt to serve a prison term of 12 to 48 months, suspended the sentence, and placed Hunt on probation for a term not to exceed five years. The State filed two separate reports of technical violations of Hunt's probationary terms. Following the first report of technical violations, the district court reinstated Hunt's probation with additional conditions.[1] For the second report of technical violations, the district court applied the 2019 amendments to NRS 176A.630(2)(c), temporarily revoked Hunt's probation, concluded it was Hunt's second temporary revocation of probation, and ordered him to serve 90 days in custody. Hunt argues the district court abused its discretion by temporarily revoking his probation and ordering him to serve 90 days in

[1]The district court did not explicitly order Hunt's probation temporarily revoked before reinstating probation.

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custody. The State responds that Hunt's contentions are misplaced because they are based upon application of NRS 176.630A(2)(c), that provision was not in effect when Hunt committed his offense, and it does not apply retroactively.

The decision to revoke probation is within the broad discretion of the district court and will not be disturbed absent a clear showing of abuse. *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). "Parole and probation revocations are not criminal prosecutions." *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980). Rather, "[r]evocation of parole or probation is regarded as reinstatement of the sentence for the underlying crime, not as punishment for the conduct leading to the revocation." *United States v. Brown*, 59 F.3d 102, 104 (9th Cir. 1995). That is, probation revocation proceedings are part of the penalty for the underlying crime. *See Johnson v. United States*, 529 U.S. 694, 701 (2000) ("[P]ostrevocation penalties relate to the original offense."). And "[i]t is well established that under Nevada law, the proper penalty is the penalty in effect at the time of the commission of the offense and not the penalty in effect at the time of sentencing." *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008).

Hunt committed his offense prior to the July 1, 2020, effective date of the 2019 amendments to NRS 176A.630(2)(c). *See* 2019 Nev. Stat., ch. 633, § 35, at 4401-03; 2019 Nev. Stat., ch. 633, § 137, at 4488. Thus, in sanctioning Hunt pursuant to the 2019 amendments to NRS 176A.630(2)(c) for violating the terms of his probation, the district court applied the statute retroactively. The preliminary question in this appeal is whether the district court erred by applying the 2019 amendments to NRS 176A.630 retroactively.

To determine the answer, we must ascertain whether the Legislature intended that statutory provision to be so applied. *See Johnson*, 529 U.S. at 701. A basic presumption is that statutes, and in particular criminal statutes, are not to be applied retroactively. *See id.* "In Nevada, as in other jurisdictions, statutes operate prospectively, unless the Legislature clearly manifests an intent to apply the statute retroactively, or it clearly, strongly, and imperatively appears from the act itself that the Legislature's intent cannot be implemented in any other fashion." *Pub. Employees' Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 154, 179 P.3d 542, 553 (2008) (internal quotation marks omitted); *accord Pullin*, 124 Nev. at 567, 188 P.3d at 1081. Thus, whether the Legislature intended NRS 176A.630(2)(c) to be applied retroactively is an issue of statutory interpretation.

"Statutory interpretation is a question of law subject to de novo review." *Williams v. State Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017). "The goal of statutory interpretation is to give effect to the Legislature's intent." *Id.* (internal quotation marks omitted). "To ascertain the Legislature's intent, we look to the statute's plain language." *Id.* "When the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, this court must give effect to that plain meaning as an expression of legislative intent without searching for meaning beyond the statute itself." *Bd. of Parole Comm'rs v. Second Judicial Dist. Court (Thompson)*, 135 Nev. 398, 404, 451 P.3d 73, 78-79 (2019) (internal quotation marks omitted).

A review of NRS 176A.630(2)(c) demonstrates that the Legislature did not clearly manifest an intent for that statute to apply retroactively. "[W]hen the Legislature intends retroactive application, it is

capable of stating so clearly." *Pub. Employees' Benefits Program*, 124 Nev. at 155, 179 P.3d at 553. Nothing in the text of NRS 176A.630(2)(c) suggests the Legislature intended for the statute to apply retroactively.[2] In addition, it does not clearly, strongly, and imperatively appear from a review of the statute that the Legislature's intent cannot be implemented in any other fashion. Finally, the Legislature's subsequent actions further suggest that it did not intend the 2019 amendments to NRS 176A.630(2)(c) to be retroactive. The same year the amendments were to take effect, the Legislature specifically made the 2019 amendments to NRS 176A.500 apply retroactively, *see* 2020 Nev. Stat., ch. 4, § 10, at 73, but it did not do so for NRS 176A.630 even though both statutes had been amended in the same 2019 bill. Had the Legislature intended the 2019 amendments to be retroactive, it could have explicitly made them so at the same time it made the amendments to NRS 176A.500 retroactive.

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[2]NRS 176A.630(2) states

> If the court finds that the probationer committed one or more technical violations of the conditions of probation, the court may: (a) Continue the probation or suspension of sentence; (b) Order the probationer to a term of residential confinement pursuant to NRS 176A.660; (c) Temporarily revoke the probation or suspension of sentence and impose a term of imprisonment of not more than: (1) Thirty days for the first temporary revocation; (2) Ninety days for the second temporary revocation; or (3) One hundred and eighty days for the third temporary revocation; or (d) Fully revoke the probation or suspension of sentence and impose imprisonment for the remainder of the sentence for a fourth or subsequent revocation.

Hunt contends that, because NRS 176A.630(2)(c) is the Legislature's directive to the district court as to what the court should do if the court finds that a probationer committed a technical violation of his probation, the date of this finding is the date that determines which version of the statute applies to the probationer's revocation proceedings. That is, the district court's finding of a technical violation is the "triggering event." Hunt bases his contention upon *Thompson*, 135 Nev. 398, 451 P.3d 73, and *Picetti v. State*, 124 Nev. 782, 192 P.3d 704 (2008).

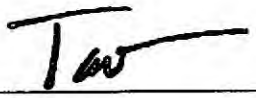
In *Thompson*, the Nevada Supreme Court discussed the retroactivity of a statute that allows, under certain conditions, the Board of Parole Commissioners to petition a court of original jurisdiction to modify a parolee's sentence. *See* 135 Nev. at 402-04, 451 P.3d at 77-78. In *Picetti*, the Nevada Supreme Court discussed the retroactivity of a statute that allows third-time driving-under-the-influence offenders who plead guilty to apply for a program of treatment. *See* 124 Nev. at 793-94, 192 P.3d at 711-712. Critically, neither opinion involved postrevocation penalties. And as stated above, "postrevocation penalties relate to the original offense." *Johnson*, 529 U.S. at 701. Thus, Hunt's reliance on *Thompson* and *Picetti* is misplaced.

Because the Legislature did not provide a clear statement of its intent to apply NRS 176A.630(2)(c) retroactively, that statute should not have been applied in a retroactive manner to Hunt's probation revocation proceedings. Thus, the district court abused its discretion by temporarily revoking Hunt's probation and imposing a term of 90 days of imprisonment pursuant to NRS 176A.630(2)(c). Therefore, we reverse the district court's decision and remand for the district court to conduct a new probation revocation hearing utilizing NRS 176A.630 as it existed when Hunt

committed his offense. *See* 1997 Nev. Stat, ch. 654, § 2, at 3237-38. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[3]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 19
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[3]Because we conclude the district court abused its discretion by temporarily revoking Hunt's probation pursuant to the 2019 amendments to NRS 176A.630, we need not consider Hunt's remaining claims.