

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38047

FILED

JUL 29 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Craig Johnson's post-conviction petition for a writ of habeas corpus.

On April 13, 1999, Johnson was convicted, pursuant to a guilty plea, of one count of level-three trafficking in a controlled substance. The district court sentenced Johnson to serve a prison term of life with parole eligibility in 10 years, and then suspended execution of the sentence and placed Johnson on probation for a time period not to exceed 5 years.

On February 1, 2000, the Nevada Division of Parole and Probation filed a violation report against Johnson, alleging he violated his probation by using controlled substances, possessing drug paraphernalia, and missing counseling sessions. After conducting a parole revocation hearing, the district court revoked Johnson's probation.

On September 6, 2000, Johnson filed a proper person post-conviction petition for a writ of habeas corpus, alleging that Robert Bell, his counsel appointed to represent him at the probation revocation proceeding, was ineffective. The State opposed the petition. The district court appointed counsel, who supplemented the petition on December 19, 2000. After conducting an evidentiary hearing, the district court denied the petition, finding that counsel was not ineffective. Johnson filed the instant appeal.

Johnson contends that the district court erred in rejecting his claim that Bell was ineffective at the probation revocation hearing. In particular, Johnson claims that Bell was ineffective in failing to: (1) present evidence refuting the allegations made in the violation report; (2) proffer testimony from a psychologist expert about Johnson's mental condition; (3) advise Johnson of his right to appeal the order revoking his probation; and (4) argue that the district court modify Johnson's original sentence imposing a term of years. We disagree.

To state a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the outcome of the proceedings would have been different.¹

¹Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

Even assuming without deciding that Bell's representation was deficient, Johnson has failed to show that the outcome of the probation revocation proceeding would have been different. 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.² Evidence supporting a decision to revoke probation must merely be sufficient to reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation.³ At the evidentiary hearing on his post-conviction petition, Johnson conceded that he violated his probation by using a controlled substance. Additionally, Johnson's probation officer testified that Johnson had tested positive on several occasions for controlled substances and had committed the other violations contained in the probation report. Finally, Bell testified that he did not seek a modification of Johnson's sentence because the district court generally did not modify sentences at probation revocation hearings, and that after Johnson's probation was revoked, Bell advised Johnson of his right to appeal, but Johnson did not request an appeal.

Johnson has failed to show that the outcome of the probation revocation proceeding would have been different, and in fact, Johnson admitted that his conduct was not as good as required by the conditions of

²Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974).

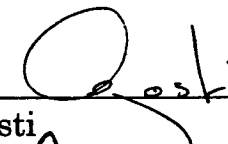
³Id.


his probation. We therefore conclude the district court's finding that counsel was not ineffective is supported by the record.⁴

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Connie J. Steinheimer, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁴See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).