

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY GRECO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72754

FILED

DEC 29 2017

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

ORDER VACATING JUDGMENT AND REMANDING

Anthony Greco appeals from a district court order revoking probation and reinstating his judgment of conviction. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Greco contends the district court erred in revoking his probation solely because he was unable to pay the court-ordered restitution. Probation may be properly revoked when "[t]he evidence and facts . . . reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation." *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974).

A state may "imprison[] an indigent who wilfully fails or refuses to make a good faith effort to comply with an alternative payment plan established by the court." *Gilbert v. State*, 99 Nev. 702, 708, 669 P.2d 699, 703 (1983). However, probation may not be revoked simply because the probationer, because of his indigency, is not able to pay restitution. *Burke v. State*, 96 Nev. 449, 451, 611 P.2d 203, 204 (1980). To that end, before revoking probation due to a failure to pay, a district court must

conduct a hearing as to the defendant's financial ability to pay. *Gilbert*, 99 Nev. at 708; 669 P.2d at 703.

Here, the State sought to revoke Greco's probation for his failure to make any payments toward restitution.¹ Following the first two revocation hearings, the district court filed orders reinstating probation and set status hearings to monitor Greco's restitution-payment progress. At those hearings, Greco stated he had little income, was on Medicaid, received food stamps, and was over a year behind in paying his rent. He also provided documentation of his multiple medical issues and that they prevented him from being able to work, and he represented he had filed for disability. At his third and final hearing, Greco noted he continued to have medical issues, and he represented he had no means to make any restitution payments and recently filed for bankruptcy protection. The State never argued Greco had the ability to pay restitution.

The district court did not conduct an evidentiary hearing regarding Greco's indigency or his ability to make even a good faith restitution payment. Rather, it stated, "He's declared bankruptcy, he has medical problems; he's just not going to pay restitution." It then ordered Greco's probation revoked and remanded him into custody.


We conclude the district court abused its discretion in revoking Greco's probation without first conducting an evidentiary

¹We note the probation violation report also alleged Greco failed to provide proof of employment. The State never argued this as a ground for probation revocation, and the district court did not indicate it was a consideration in its decision.

hearing and making specific findings as to his ability to pay. *See Lewis*, 90 Nev. at 438, 529 P.2d at 797. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for a hearing consistent with this order.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Robert W. Lane, District Judge
Michael P. Printy
Attorney General/Carson City
Attorney General/Las Vegas
Nye County District Attorney
Nye County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY GRECO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 72754
District Court Case No. CR7522

FIFTH JUDICIAL DISTRICT

JAN 26 2018

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

Nye County Clerk
Keely L. Adams Deputy

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for a hearing consistent with this order."

Judgment, as quoted above, entered this 29th day of December, 2017.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this January 23, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

