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Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-2022-0596

Bert Monte Harper

v.

State of Alabama

**Appeal from Madison Circuit Court
(CC-21-319.70)**

KELLUM, Judge.

The appellant, Bert Monte Harper, appeals from the Madison Circuit Court's revocation of his probation. The record indicates that Harper was convicted of unlawful possession of a controlled substance in 2021. He was sentenced to 97 months' imprisonment; that sentence was

split, and he was ordered to serve 8 months in jail followed by 2 years' supervised probation.

On February 10, 2022, Harper's probation officer filed a delinquency report alleging that Harper had failed to comply with the terms and conditions of his probation based on his violation of the Alabama Sex Offender Registration and Community Notification Act, §15-20A-1, et seq., Ala. Code 1975 ("SORNA"). The circuit court conducted a probation-revocation hearing on March 31, 2022, at which Harper was present and was represented by counsel.

At the hearing, Investigator Barry Childers, a SORNA compliance officer for Madison County, testified that supervision of Harper as a sex offender subject to the provisions of SORNA was transferred from Jefferson County to Madison County in November 2021.¹ Investigator Childers testified that Harper "started registering" November 18, 2021, and had most recently registered on January 6, 2022. (R. 7.) Harper was required to report to the SORNA office once every three months. Harper

¹The record indicates that Harper was convicted in 2004 of rape in the first degree and was ordered to register as a sex offender under SORNA because of that conviction.

registered his address with the SORNA office as --- Baltimore Hill Road in Huntsville.

In January 2022, the SORNA office in Madison County received an anonymous tip that Harper was not living at his registered address. On January 11, 2022, Inv. Childers went to Harper's registered address. Inv. Childers testified that he knocked on the door and that he was greeted by a man named Chase Johnson. Johnson told Inv. Childers that "he had never heard of Mr. Harper, and then he said, 'Let me go get someone else who may know more.'" (R. 8.) Another resident, Ariel Kelso, spoke with Inv. Childers and told him that Harper "comes and goes, and then she later admitted that [Harper has] only been there a couple of times, once or twice since the beginning." (R. 8.) Kelso clarified that "the beginning" meant in the last two or three weeks. Inv. Childers testified that SORNA rules allowed a registered offender to stay at another location but for no longer than 72 hours. Inv. Childers was told that Harper might be living at his girlfriend's house but, according to Childers, the address given for the girlfriend's house was not a compliant address under SORNA guidelines. Inv. Childers then obtained a warrant for Harper's arrest.

At the conclusion of the hearing, the circuit court issued a written order revoking Harper's probation. Harper timely filed a motion to reconsider in which he argued, among other things, that the revocation of his probation was based solely on hearsay evidence. The circuit court denied the motion and this appeal followed.

On appeal, Harper reasserts the issue argued below, namely, that the circuit court erred in revoking his probation because, he says, the only evidence indicating that he had violated SORNA was the uncorroborated hearsay testimony of Inv. Childers. Harper acknowledges that hearsay evidence is admissible in revocation proceedings but contends that the hearsay evidence must be accompanied by nonhearsay evidence. Harper contends that the State presented insufficient nonhearsay evidence to support the revocation of his probation in this case. We agree.

"It is well settled that hearsay evidence may not form the sole basis for revoking an individual's probation." Goodgain v. State, 755 So. 2d 591, 592 (Ala. Crim. App. 1999) (citing Clayton v. State, 669 So. 2d 220 (Ala. Crim. App. 1995)). However, "hearsay evidence is admissible in a revocation proceeding," Beckham v. State, 872 So. 2d 208, 211 (Ala. Crim.

App. 2003), and a combination of both hearsay and nonhearsay evidence may be sufficient to warrant revocation. See, e.g., Askew v. State, 197 So. 3d 547, 548-49 (Ala. Crim. App. 2015). "[W]hen the State presents a mixture of hearsay and nonhearsay evidence to show that a defendant violated his probation by committing a new offense, the circuit court cannot revoke a defendant's probation for that violation unless the nonhearsay evidence connects the defendant to the alleged offense." Walker v. State, 294 So. 3d 825, 832 (Ala. Crim. App. 2019).

In Anderson v. State, [Ms. CR-20-0526, October 8, 2021] ___ So. 3d ___ (Ala. Crim. App 2021), this Court addressed the issue whether a circuit court erred in revoking probation based solely on the hearsay testimony of a police officer who had testified that the probationer -- a sex offender subject to the provisions of SORNA -- was not present at his registered address when the officer conducted a home-compliance check.

Finding Anderson was entitled to relief on his claim, this Court stated:

"In Coach v. State, 44 So. 3d 549 (Ala. Crim. App. 2009), and later in Nguyen v. State, 317 So. 3d 1026 (Ala. Crim. App. 2020), this Court faced scenarios nearly identical to the one here. In each of those cases, the probationer was a sex offender whose probation was revoked for violating the terms and conditions of his probation by failing to register a change in address. The State presented evidence at the revocation hearing in each case indicating that a law-enforcement officer

had gone to the probationer's registered address; that the probationer was not present at the address at the time; and that a person who was present at the address had told the officer in Coach that the probationer did not live there and in Nguyen that the probationer had not been there for three weeks. In both cases, we reversed the probation revocations, noting that the nonhearsay observations of the law-enforcement officers that the probationers were not present at the addresses were not sufficient to indicate that the probationers did not live at the addresses and that, therefore, the only evidence indicating that the probationers did not, in fact, live at the registered addresses were the hearsay statements of the persons present at the addresses.

"Similarly, here, Det. Williams's nonhearsay observation that Anderson was not present at his registered address was not sufficient to indicate that Anderson did not live at the address. Rather, the only evidence indicating that Anderson did not live at the address, and that he thus had violated [SORNA] by not registering a change in address, was the hearsay statement of Davis. Therefore, the trial court erred in revoking Anderson's probation for violating [SORNA] by failing to register a change of address."

Anderson, ___ So. 3d at ___.

In this case, as in Anderson, Coach v. State, 44 So. 3d 549 (Ala. Crim. App. 2009), and Nguyen v. State, 317 So. 3d 1026 (Ala. Crim. App. 2020), the State presented the hearsay testimony of a law-enforcement officer who had gone to the probationer's registered address, did not see the probationer at the address, and inquired of someone at the address whether the probationer lived at the address. In each of those cases, as

in this case, the State presented no nonhearsay evidence to corroborate the hearsay testimony of the investigating officer.

Because the State failed to present any nonhearsay evidence to establish that Harper had violated the terms and conditions of his probation, the circuit court erred in revoking Harper's probation. Accordingly, this Court reverses the circuit court's order revoking Harper's probation and remands this case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Windom, P.J., and McCool, Cole, and Minor, JJ., concur.