IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

HARLAND STANLEY ROWLAND, *Appellant*.

No. 1 CA-CR 13-0172
FILED 11-19-2013

Appeal from the Superior Court in Yuma County
No. S1400CR201000095
The Honorable Maria Elena Cruz, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Terry M. Crist, III

Counsel for Appellee

Terri L. Capozzi, Esq., Yuma
By Terri L. Capozzi

Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Lawrence F. Winthrop delivered the decision of the Court, in which Judge Margaret H. Downie and Judge Jon W. Thompson joined.

W I N T H R O P, Presiding Judge:

¶1 Harland Stanley Rowland ("Appellant") appeals the trial court's decision to revoke his probation and sentence him to incarceration. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 On October 23, 2009, Appellant crashed his car into a brick wall, causing extensive damage. Appellant hurriedly drove from the scene, and after police officers located him and the damaged vehicle at his home, he was taken into custody. Subsequent testing indicated that Appellant's blood alcohol content was .163.

¶3 On April 13, 2011, pursuant to a plea agreement, Appellant was found guilty of Count I, endangerment, a class six felony, and Count II, driving under the influence of intoxicating liquor (DUI), a class one misdemeanor. On May 12, 2011, the trial court suspended sentencing and placed Appellant on thirty-six months' supervised probation. Appellant also received and signed a copy of the Uniform Conditions of Supervised Probation. Condition twelve of those conditions provided: "I will not possess or use illegal drugs or controlled substances and will submit to drug and alcohol testing as directed by the [Adult Probation Department]." Thus, Appellant's probation required that, as a condition of his probation, he submit to urinalysis testing. Appellant was further advised and acknowledged that if he violated any of the conditions of his probation, his probation could be revoked and he could be sentenced to prison.

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[1] We view the facts in the light most favorable to sustaining the trial court's determination, resolving all reasonable inferences against Appellant. *See State v. Greene*, 192 Ariz. 431, 436, ¶ 12, 967 P.2d 106, 111 (1998).

¶4 Appellant nevertheless violated condition twelve on several occasions, including twice testing positive for methamphetamine and once having a blood alcohol content of .047. He also failed to submit a required sample for urinalysis at the Treatment Assessment Screening Center ("TASC") in October 2012. On January 5, 2013, he again failed to submit a urine sample, and his probation officer subsequently filed a petition to revoke his probation, alleging he had violated condition twelve of his probation. Appellant denied the allegation in the petition, and the court scheduled a probation violation hearing for February 8, 2013.

¶5 At the probation violation hearing, Appellant and his probation officer testified that the terms of Appellant's probation required him to submit a urine sample to TASC once or twice a month as directed. The probation officer testified that, according to information provided by TASC, Appellant had called the TASC call-in line at 5:01 a.m. on Saturday, January 5, 2013, and was directed to provide a sample that day. Appellant reportedly arrived at TASC at approximately 10:25 a.m., and he tried but failed to provide urine samples at 11:25 and 11:55 a.m. Although TASC customarily allows individuals three attempts to produce urine, Appellant was not afforded a third opportunity because TASC closed at 12:00 p.m. that day. Appellant claimed that, after he failed to supply a urine sample on January 5, he tried calling his probation officer that day and left her a message explaining the situation. His probation officer testified, however, that she received no message from Appellant that day and had no contact with Appellant from January 5 until the February 8 hearing.

¶6 Appellant testified that he suffers from several medical conditions and takes numerous drugs for those conditions, including "water pills."[2] Appellant claimed he had been ill in the days before January 5 and had stopped taking the water pills, which he believed caused him to become dehydrated and limited his ability to produce urine. He maintained that, due to his illness and changes in his use of medications, he was unable to urinate at TASC.

¶7 On cross-examination, however, Appellant admitted that, with the exception of one drug that had been added a few months before January 5, he had been taking the same medications for the entirety of his probation. He further acknowledged that, during that twenty-month period, he had only once previously claimed difficulty urinating – in

[2] The water pills are apparently furosemide, a diuretic, which reduces water retention by increasing the production of urine.

October 2012, due to illness. On that occasion, he immediately contacted his probation officer, and he was ordered to serve ten days in jail for that violation. Appellant admitted that, between October 2012 and January 2013, he had no difficulty producing urine samples.

¶8 Appellant's probation officer testified she was aware Appellant took medications for certain conditions, but Appellant had never told her that his use of those medications could prevent him from urinating. She also noted that, in her meetings with Appellant on the days leading up to January 5, she did not notice that he had any signs of illness. Further, Appellant had not previously advised her he was incapable of urinating on January 5; instead, she heard this excuse for the first time at the February 8 hearing.

¶9 At the close of the hearing, the court found that Appellant had violated term twelve of his probation and rejected his argument that his medical condition inhibited his ability to provide a sample. In making its decision, the court concluded:

> The argument presented is that the medical condition prohibited or made it such that [Appellant] could not physically provide a sample, but there's been no medical testimony – or testimony from an expert to support that any of the medication [Appellant] was taking would have that effect and so the court finds that the State has established by a preponderance of the evidence at least that [Appellant] has violated condition number 12 of his probation and the court finds him in violation of probation.

¶10 At the March 8, 2013 disposition hearing, the court granted the State's petition to revoke Appellant's probation and sentenced him to concurrent, presumptive terms of one year's imprisonment in the Arizona Department of Corrections for Count I and six months' incarceration in the Yuma County Jail for Count II, with credit for 144 days of presentence incarceration. We have jurisdiction over Appellant's timely appeal pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes sections 12-120.21(A)(1) (West 2013),[3] 13-4031, and 13-4033(A).

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[3] We cite the current version of the applicable statutes if no revisions material to our analysis have since occurred.

ANALYSIS

¶11 Appellant argues that the trial court abused its discretion in revoking his probation because the evidence did not show he willfully violated condition twelve of his probation. Relying on *State v. Alves*, 174 Ariz. 504, 851 P.2d 129 (App. 1992), and *State v. Robinson*, 142 Ariz. 296, 689 P.2d 555 (App. 1984), he argues that if a violation is due to circumstances beyond a probationer's control, the violation is not willful, and he maintains his violation was due to circumstances beyond his control – specifically, his alleged illness and changes in the use of his medication.

¶12 We review for an abuse of discretion a trial court's decision to revoke probation. *See State v. Portis*, 187 Ariz. 336, 338, 929 P.2d 687, 689 (App. 1996); *State v. Sanchez*, 19 Ariz. App. 253, 254, 506 P.2d 644, 645 (1973). For probation to be revoked, the State must prove by a preponderance of the evidence that the probationer knew of the probation terms, was provided the terms in writing, and willfully violated the terms. *See* Ariz. R. Crim. P. 27.8(b); *State v. Elmore*, 174 Ariz. 480, 483, 851 P.2d 105, 108 (App. 1992); *Alves*, 174 Ariz. at 505-06, 851 P.2d at 130-31. Because the trial court is in the best position to assess the credibility of witnesses and resolve conflicts in the evidence, we will not reweigh the evidence and will defer to the trial court's factual findings if supported by any theory of the evidence. *State v. Vaughn*, 217 Ariz. 518, 521, ¶ 14, 176 P.3d 716, 719 (App. 2008); *State v. Thomas*, 196 Ariz. 312, 313, ¶ 3, 996 P.2d 113, 114 (App. 1999).

¶13 We find Appellant's reliance on *Alves* and *Robinson* unavailing. In *Alves*, this court stated that a violation could be non-willful if the probationer was not made aware of an unwritten condition, *see* 174 Ariz. at 506, 851 P.2d at 131, and in *Robinson*, we concluded that revoking a probationer's probation for failure to complete his payments of a fine and restitution without considering his ability to pay violated principles of fundamental fairness. *See* 142 Ariz. at 297, 689 P.2d at 556; *but see State v. Stapley*, 167 Ariz. 462, 463, 808 P.2d 347, 348 (App. 1991) (concluding that a probationer willfully violated the terms of his probation because, even though he could not pay the full amount of restitution, he made no effort to make partial payments).

¶14 Unlike the probationer in *Alves*, Appellant makes no claim he was unaware of the conditions of his probation, and the record would belie such a contention even if made. Appellant was advised of and provided with the written conditions of his probation, including condition

twelve, and he was further advised a violation of that or any condition could result in revocation of his probation. Appellant acknowledged his awareness of condition twelve and had demonstrated that awareness by previously complying with that condition in most instances.

¶15 Further, our jurisprudence in *Robinson* and *Stapley* simply makes clear that the trial court must carefully consider the facts surrounding an alleged violation and a probationer's good faith efforts to comply with the conditions of probation. That jurisprudence does not, however, require a court to automatically accept a probationer's testimony or claims. Instead, the court must assess each witness's credibility and resolve any conflicts in the evidence. *See Vaughn*, 217 Ariz. at 521, ¶ 14, 176 P.3d at 719; *Thomas*, 196 Ariz. at 313, ¶ 3, 996 P.2d at 114.

¶16 In this case, the State presented evidence that Appellant was directed to provide a urine sample on January 5, 2013, and despite the fact that TASC provided Appellant with two opportunities to produce a urine sample that day, he failed to do so. Although Appellant contended he was unable to urinate due to illness or his use of medication, the trial court was free to reject his contention based on its assessment of his credibility. The fact that Appellant had successfully produced urine samples all but once in the previous twenty months while taking substantially the same medications supports the court's credibility assessment. Further, the testimony of Appellant's probation officer - that she observed no signs of illness in Appellant in the days before his violation and that Appellant did not contact her to offer his explanation after he failed to comply with the TASC directive – conflicted with Appellant's testimony. The trial court certainly could have considered these conflicts in the evidence in making its credibility determination. Moreover, although Appellant was not necessarily required to provide medical or expert testimony to corroborate his claim, the court could certainly consider his failure to do so, as well as his lack of knowledge and experience as a lay person to causally link his illness and medications to his inability to urinate, in making its determination. In this case, the trial court simply acknowledged that, if presented, such evidence might have bolstered Appellant's credibility.[4]

[4] Also, the mere fact that Appellant appeared at TASC does not establish that he fully made efforts to comply with condition twelve or was incapable of urinating. Appellant provided no explanation why, if he truly was as dehydrated as he claims, he did not arrive at TASC sooner and allow himself time to hydrate.

CONCLUSION

¶17 Because substantial evidence presented at the probation violation hearing supports the trial court's finding that Appellant willfully violated condition twelve of his probation, we find no abuse of the court's discretion. The trial court's decision to revoke Appellant's probation and sentence him to incarceration is affirmed.