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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07/01/10
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE ANTHONY S.)
) No. 1 CA-JV 09-0178
)
) Department C
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) 103(G) Ariz. R.P. Juv. Ct.;
) Rule 28 ARCAP)
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Appeal from the Superior Court in Yuma County

Cause No. No. S1400JV200600750

The Honorable John Neff Nelson, Judge

AFFIRMED

Law Offices of Paul J. Mattern
By Paul J. Mattern
Attorneys for Appellant

Phoenix

Jon R. Smith, Yuma County Attorney
By Mark Edward Hessinger, Deputy County Attorney
Attorneys for Appellee

Yuma

S W A N N, Judge

¶1 Anthony S. appeals the juvenile court's order denying (1) his motion to dismiss the State's petition to revoke his probation and (2) his motion to file a delayed appeal. For the reasons set forth below, we affirm.

Factual and Procedural History

¶2 On April 25, 2008, Anthony was placed on intensive probation until January 25, 2009, after the court adjudicated him delinquent for Attempted Criminal Damage. He was ordered to pay restitution in the amount of \$9,000. One of the conditions of his probation cautioned that pursuant to A.R.S. § 8-341(B)(1)-(6), his "probationary period shall be extended if the Court determines that it is in the best interest of you or the public to require continued supervision."

¶3 On January 20, 2009, Anthony's probation officer filed a Petition to Revoke Probation because Anthony failed to pay \$8,595 in restitution, a \$20 fee, and \$100 in attorney's fees. In the petition, the probation officer avowed that "the minor and the community would best be served by revoking or modifying the terms of probation" by "extend[ing] [his probation] for a period of 12 months."

¶4 An advisory hearing on the petition was held on February 2, 2009. The court explained to Anthony and his mother that it had scheduled the hearing because the probation officer had requested that Anthony's probationary period "be extended

for a period of 12 months" to allow additional time for restitution to be paid. The court then asked if either Anthony or his mother had any objections to the extension of his probation. Without the assistance of counsel, both of them responded that they had no objections.

¶15 After determining that it would extend Anthony's probation for an additional 12 months, the court asked how much of the restitution had been paid. Anthony responded that he did not know, and his mother indicated that perhaps his father had paid down a portion of the balance. But Anthony's probation officer stated that to her knowledge "there have been no payments by father. The only payments that have been made have been by the codefendant"

¶16 On August 31, 2009, and September 3, 2009, Anthony's probation officer filed two additional petitions to revoke Anthony's probation, alleging that he (1) failed to attend all of his classes, (2) violated his 7:00 p.m. curfew and absconded from probation, and (3) used marijuana. At a September 3, 2009 advisory hearing, the court appointed counsel for Anthony, and found probable cause to detain him until his "advisory/adjudication hearing" on September 16, 2009.¹

¹ Anthony had been brought to the September 3 advisory hearing after the issuance of a warrant.

¶17 On September 8, 2009, the probation officer filed another petition to revoke Anthony's probation, alleging that he had used methamphetamine. At the September 16, 2009 advisory/adjudication hearing, Anthony's counsel was appointed to represent him in connection with the most recent petition, and all three petitions were addressed at that hearing.

¶18 By stipulation, Anthony admitted responsibility for the charges in all three petitions, except for the truancy allegation, which the parties agreed to dismiss. Upon establishing a factual basis for the plea and finding that Anthony had voluntarily, knowingly, and intelligently agreed to admit responsibility, the court set the matter for a disposition hearing.

¶19 On September 22, 2009, defense counsel filed a motion to dismiss and terminate probation, or in the alternative to authorize a delayed appeal. The motion argued that Anthony had been denied due process because his probation was extended without advice relating to his legal rights and options. Accordingly, Anthony contended that the adjudication for the first probation violation must be set aside and Anthony discharged from probation, rendering the trial court without jurisdiction to consider the August and September 2009 petitions.

¶10 On October 1, 2009, the court held a disposition hearing and heard arguments with respect to Anthony's motion of September 22. Ruling from the bench, the court explained that while the January 2009 petition was captioned incorrectly as a Petition to Revoke Probation, the substantive language in the petition indicated that it was a request to modify the probation. And because the court treated the January 2009 petition only as a request to modify Anthony's probation, there was no right to appeal.

¶11 The court denied both Anthony's motion to dismiss and his motion to seek a delayed appeal. After considering the recommendations of the parties, the court ordered Anthony to be reinstated on intensive probation for a period of one year.

¶12 Anthony timely appeals. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1) (2003), and 12-2101(B).

Discussion

¶13 Anthony argues that because he was not advised of his right to appeal the extension of his probation, the trial court abused its discretion when it denied his motion to file a delayed appeal. He contends that the February 2009 adjudication of his probation must be set aside, resulting in a discharge from probation. He further contends that because he was not properly on probation when the other alleged violations

occurred, the juvenile court was without jurisdiction to consider the August and September 2009 petitions. We disagree.

¶14 We review adjudications of juvenile delinquencies for abuse of discretion. *In re Miguel R.*, 204 Ariz. 328, 331, ¶ 3, 63 P.3d 1065, 1068 (App. 2003). We consider the facts in the light most favorable to sustaining the adjudication. *In re John M.*, 201 Ariz. 424, 426, ¶ 7, 36 P.3d 772, 774 (App. 2001). We will affirm a juvenile court's denial of a motion to file a delayed appeal unless the defendant demonstrates error and that the error caused him prejudice. *See In re Victor P.*, 190 Ariz. 354, 357, 947 P.2d 928, 931 (App. 1997) (affirming a juvenile court's denial because "[e]ven assuming the juvenile court erroneously denied the delayed appeal, the error did not prejudice Victor").

¶15 The juvenile court incorrectly concluded that because it merely modified the terms of probation, Anthony was not entitled to appeal. But "[a]n order modifying the terms of juvenile probation is an appealable order." *Andrew G. v. Peasley-Fimbres*, 216 Ariz. 204, 205, ¶ 3, 165 P.3d 182, 183 (App. 2007). At the February 2009 hearing, Anthony was not informed of his right to appeal. Though this amounted to a technical error, no appeal concerning the merits of the February 2009 order would have been helpful to Anthony, because he admitted that the restitution had not been paid and he consented

to the extension of probation. We therefore find no prejudice inherent in the failure to give notice.

¶16 Each of Anthony's arguments -- that the extension of his probation was invalid and that he should have been permitted to appeal the extension after the deadline for appeal -- therefore hinges on the proposition that he was entitled to counsel at the February 2009 hearing. We conclude that he was not. "In all proceedings involving offenses . . . that may result in detention, a juvenile has the right to be represented by counsel." A.R.S. § 8-221(A). Here, however, even if the probation officer's petition could be read to have sought detention, the court always treated the petition only as one to modify probation by extending its length -- a remedy that was expressly contemplated in the original order of probation. Though it was within the juvenile court's discretion to appoint a public defender in such circumstances, there was no automatic right to counsel. *Haas v. Colosi*, 202 Ariz. 56, 59, ¶ 9, 40 P.3d 1249, 1252 (App. 2002) (citing A.R.S. §§ 11-584(A)(1)(e) and 8-221(H)(1)). Anthony did not have an absolute right to an attorney, and the court did not abuse its discretion when it did not appoint him one. The absence of counsel therefore did not render the extension of probation unlawful, and it was within

the court's jurisdiction to consider the August and September 2009 petitions.²

Conclusion

¶17 For the reasons stated above, we affirm.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Presiding Judge

/s/

DONN KESSLER, Judge

² Anthony argues that the trial court failed to find a factual basis for the probation violation; however, the probation officer's avowal to the court that Anthony had failed to pay any portion of the balance of the restitution was sufficient. See Ariz. R.P. Juv. Ct. 32(E)(3).