

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**State of West Virginia,  
Plaintiff Below, Respondent**

**vs) No. 11-0921 (Upshur County 10-F-9)**

**Brenda Lee Shaw,  
Defendant Below, Petitioner**

**FILED**  
**April 16, 2012**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**MEMORANDUM DECISION**

Petitioner Brenda Lee Shaw, by counsel James Clevenger, appeals the Upshur County Circuit Court order dated May 24, 2011, revoking her probation. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The State, by counsel C. Casey Forbes, has filed its response.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendix presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner pled guilty to one count of fraudulent schemes in March of 2010 and was sentenced to one to ten years in prison. However, her sentence was suspended in lieu of five years of probation. In January of 2011, the State filed a petition for revocation, citing several violations, including failure to pay the required restitution and court costs, failure to report two different changes of address, and failure to report for monthly meetings in four out of the ten months she was on probation. Petitioner admitted to the allegations in the petition for revocation, and requested that she once again be placed on probation. Her probation officer testified, indicating that petitioner had committed more violations since the petition for revocation was filed, including associating with a person on parole, not staying in her residence at night, and lying to the probation officer about getting fired from her job and about why she wished to leave the county. During the dispositional portion of the revocation hearing, the circuit court noted that it would not consider petitioner's failure to pay her restitution and court costs due to her financial circumstances. However, the circuit court revoked petitioner's probation and reinstated her sentence based on her repeated failure to report to her probation officer and her failure to report changes of address.

Petitioner now appeals the revocation of her probation and the reinstatement of her prison sentence. As this Court has previously stated:

"When reviewing the findings of fact and conclusions of law of a circuit court sentencing a defendant following a revocation of probation, we apply a three-pronged standard of review. We review the decision on the probation revocation motion under an abuse of discretion standard; the underlying facts are reviewed under a clearly erroneous standard; and questions of law and interpretations of statutes and rules are subject to a *de novo* review." Syllabus Point 1, *State v. Duke*, 200 W.Va. 356, 489 S.E.2d 738 (1997).

Syl. Pt. 1, *State v. Inscore*, 219 W.Va. 443, 634 S.E.2d 389 (2006).

On appeal, petitioner argues that her probation violations were not substantive enough to warrant revocation. Petitioner states that her failure to pay restitution and court costs was not contumacious, as she had serious financial trouble causing her failure to consistently pay toward the restitution and costs. Petitioner argues that the State failed to prove that the failure to pay was contumacious.

In response, the State argues that the circuit court did not err in revoking petitioner's probation because the circuit court specifically stated that it did not consider petitioner's failure to pay fees and restitution in revoking the probation. The State argues that the circuit court had ample reason to revoke petitioner's probation absent consideration of her failure to pay the required fees and restitution.

Petitioner relies on the following syllabus point in arguing that the revocation of her probation was in error: "[p]robation may not be revoked for failure to pay restitution, costs and attorneys fees unless the probationer's failure is contumacious." Syllabus Point 2, *Armstead v. Dale*, [170] W.Va. [319], 294 S.E.2d 122 (1982)." Syl. Pt. 1, *State v. Minor*, 176 W.Va. 92, 341 S.E.2d 838 (1986). However, a review of the record shows that the circuit court judge specifically noted that he was not considering her failure to pay restitution or costs in revoking her probation. Thus, this Court finds no merit in petitioner's argument.

Petitioner's other violations were her failure to notify her probation officer of the fact that she relocated her residence and her failure to appear at scheduled appointments. Petitioner argues that these violations are merely technical and minor. Further, petitioner argues that both were simply oversights, she has never failed a drug test, and the alleged violations did not have any effect on her probation.

The State argues that the violations were not minor and were serious in nature. Petitioner moved twice without notifying her probation officer, and petitioner also failed to appear for meetings with her probation officer on four different occasions. The State argues that while one minor

technical violation might not be enough to warrant revocation, repeated violations, as in this case, are sufficient.

This Court has stated that “probation should not be revoked for minor technical violations of the conditions of probation. *See State v. Ketchum*, [169 W.Va. 9, 289 S.E.2d 657 (1981)].” *State v. Minor*, 176 W.Va. 92, 95, 341 S.E.2d 838, 841 (1986). In the instant matter, although the violations taken individually may be considered minor technical violations, the violations as a whole show a blatant disregard for the rules of petitioner’s probation and a pattern of violating probation. Petitioner failed to appear in four out of the ten months for meetings with her probation officer, has lied to her probation officer, and has moved at least twice without informing her probation officer. This Court finds no error in the revocation of probation in this case.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** April 16, 2012

**CONCURRED IN BY:**

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh