Rel: August 16, 2019

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-1123

Antwon Walker

v.

State of Alabama

Appeal from Coffee Circuit Court
(CC-16-236.70; CC-16-237.70;
CC-16-238.70; CC-16-239.70;
CC-16-407.70; CC-17-122.70)

COLE, Judge.

Antwon Walker appeals the circuit court's judgment revoking his probation.

Facts and Procedural History

On September 21, 2016, Walker pleaded guilty to four counts of fraudulent use of a credit card, violations of § 13A-9-14, Ala. Code 1975, and was sentenced to 44 months in prison; that sentence was split and he was ordered to serve 12 months in the Coffee County jail, followed by 24 months of probation for each conviction. (C. 14.) On January 3, 2017, Walker pleaded guilty to two counts of breaking and entering a motor vehicle, violations of § 13A-8-11, Ala. Code 1975, and was sentenced to 66 months in prison; that sentence was split and he was ordered to serve 14 months in the Coffee County jail, followed by 24 months of probation for each conviction. (C. 13.) On April 17, 2017, Walker pleaded guilty to one count of third-degree assault, a violation of § 13A-6-22, Ala. Code 1975, and was sentenced to 12 months in the Coffee County jail; that sentence was split and he was ordered to serve 70 days in jail, followed by 24 months of probation. (C. 12.)[1]

[1]We recognize that Walker's split sentence for his misdemeanor assault conviction was improper. See Collier v. State, [Ms. CR-17-0799, Apr. 26, 2019] ___ So. 3d ___ (Ala. Crim. App. 2019) (holding that "the Split Sentence Act no longer grants the trial court the authority to split a sentence for a misdemeanor offense"). But the error in the execution of that sentence was rendered moot by the circuit court's decision to revoke Walker's probation. See McGowan v.

On June 12, 2018, Walker's probation officer filed a delinquency report, alleging that Walker had violated his probation by committing the new offenses of second-degree burglary and first-degree theft of property. (C. 16-20.)

On July 25, 2018, the circuit court held a probation-revocation hearing. Walker was represented by counsel at the hearing. The State presented evidence from only two witnesses to support its claims that Walker had committed both a first-degree theft of property and a second-degree burglary. Both witnesses, Gerard Dube and Evan Sweeney, are detectives with the Enterprise Police Department, who investigated Walker's involvement in the alleged new offenses. The victims of the alleged new offenses did not testify.

Starting with the first-degree-theft offense, the State presented evidence indicating that, on February 12, 2018, Det. Dube received a report from Michael and Monica Miller that wood and tools had been taken from their property. (R. 12.) Det. Dube explained that the Millers owned a fence-building company and that they used the wood and tools in their

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State, [Ms. CR-18-0173, July 12, 2019] ___ So. 3d ___ (Ala. Crim. App. 2019). Thus, we do not address the propriety of Walker's misdemeanor sentence.

business. According to Det. Dube, the Millers suspected that Walker, a former employee, was the person responsible for taking the property. The Millers told Det. Dube that they had "made a mistake and told [Walker] that they were out of town." (R. 13.)

Det. Dube knew Walker and knew that he was living with his girlfriend. (R. 12.) Det. Dube then went and spoke with the girlfriend's mother, who confirmed that Walker was living at a house on Grimes Street with her and her daughter, and she told Det. Dube that Walker was working on remodeling their house. (R. 15.) At that point, Det. Dube went to the house on Grimes Street and, while there, got permission to search it. (R. 16.) Det. Dube testified that he saw "a large amount of wood, like four-by-four wood posts, two-by-four wood posts, a lot of wood on the side and on the front porch of the house, and then a large amount of tools, air compressors, just--you know, general toolage [sic] inside the residence." (R. 16.)

After advising Walker of his Miranda[2] rights, Det. Dube asked Walker about the tools and the wood in his house. (R. 16-17.) According to Det. Dube, Walker admitted to going to

[2]Miranda v. Arizona, 384 U.S. 436 (1966).

the Millers' property and "removing the wood," but he claimed that he had their permission to take it. (R. 17.) Walker did not admit to anything about the tools. Later, the Millers identified the wood, an air compressor, and a toolbox found at Walker's house as items taken from their property. (R. 18.) According to Det. Dube, the Millers placed the value of the items taken "into the thousands of dollars." (R. 19.) Det. Dube further testified that, after the Millers identified the tools as belonging to them, Walker said "that he didn't know how they got there." (R. 19.)

As to the second-degree-burglary offense, the State presented evidence indicating that, on February 11, 2018, Det. Sweeney began investigating a burglary that occurred at a house belonging to Charles Walker--a relative of Walker's. (R. 29-30.) According to Det. Sweeney, Charles said that, on the morning of February 11, 2018, "he was awoken by family members stating that [Walker] ... was in the residence" and that Walker was "rummaging around in the house." (R. 30.) Det. Sweeney explained that Charles said that he had barred Walker from being at his house because of Walker's drug habit and that Walker entered the house that morning without

Charles's permission. (R. 30, 35.) Because Charles did not want there to be an altercation, Charles told Det. Sweeney that "he kind of talked with Walker for a little bit" and Walker told Charles that his car had broken down and that he needed to get back to his car. Charles helped Walker by taking him back to his car and giving "him a jump." Charles told Det. Sweeney that, when he got back to his house, two cellular telephones and a prepaid telephone card were missing. (R. 30-31.)

Det. Sweeney then went to speak with Walker at the Grimes Street house. (R. 31.) When he arrived, Det. Dube was also at the house. Det. Sweeney said that, while at the house, he saw the wood and the tools and said that he was also present when the Millers identified those items as belonging to them and when they said that Walker did not have permission to take the items. (R. 32.) Det. Sweeney said that, upon arriving at the Grimes Street house, he first spoke with the girlfriend and explained to her why he was there. According to Det. Sweeney, Walker's girlfriend told him that Walker had two cellular telephones in his possession "when he came back from the house that morning," and she retrieved those phones for

Det. Sweeney. The phones were later identified as the phones that were missing after Walker left Charles's house that morning. (R. 35.)

At some point that day, Det. Sweeney spoke with Walker. After Det. Sweeney read Walker his Miranda rights, Walker admitted to going into Charles's house but claimed that "he did not force his way in, that the door just became ajar and so he went inside." (R. 35.) Walker did not admit to taking the cellular telephones. (R. 36.) Finally, Det. Sweeney said that, in a written statement, Charles explained that "the door was locked, however, it's an older door. It can be opened if enough force is applied to it." (R. 42.) Thereafter, the State rested.

Walker then presented testimony from two witnesses--Kenneth Powell and himself. Powell testified that he had also worked for the Millers and that he was living at the Grimes Street house (R. 49); that he did not know who brought the wood and the tools to the house (R. 52); and that he did not take those items from the Millers' house (R. 53). Walker testified that he did not believe that his probation-

revocation hearing was being conducted in a procedurally fair way (R. 58-59) and denied committing the alleged new offenses.

At the close of the hearing, Walker's counsel argued that the State had not satisfied its burden of proof as to the theft-of-property offense because Walker said that he had the Millers' permission to take the wood, because "[t]here hasn't been any kind of matchup of serial numbers to show that this generic air compressor and generic toolbox were actually stolen from the Millers," and because "[t]here has been nothing detailing over $2,500 being taken." (R. 71.) Walker's counsel also argued that the State had not satisfied its burden of proof as to the second-degree-burglary offense because "the only evidence put forth before this Court is hearsay that Mr. Walker went into a residence without permission to commit a felony." (R. 71.)

The circuit court disagreed, and found as follows:

> "[A]s to the burglary charge, based upon the evidence that's presented by Detective Sweeney, which also included a statement that these telephones were identified as cellphones being taken from the residen[ce] of Charles Walker, Detective Sweeney testified that Charles Walker did not give you permission to be there. In fact, had told you not to be at that house in that residence. Based on all of that, and the identifying of those cellphones that ended up being at the residence where you were,

> where somebody--Ms. [K.B.] said those cellphones were brought to that residence by you, based upon the totality of that, which also includes hearsay which is admissible--it's not based solely upon hearsay--the Court is reasonably satisfied that you violated the terms and condition[s] of probation by committing a new offense of burglary in the second degree.
>
> "As to the theft first, the Court is reasonably satisfied, based upon the totality of the evidence. There was testimony that the victims identified this wood, air compressor, toolbox, and that based upon the victims indicating to them that these were the reason--or the officer saying this was a theft first was based upon the thousands of dollars in value of these items that had been taken with the--including the tools from the Millers, the Court is reasonably satisfied that you violated terms and conditions of probation by committing this new offense of theft of property in the first degree."

(R. 71-73.)

After the hearing, the circuit court issued a written order revoking Walker's probation, finding, among other things, that it was reasonably satisfied that Walker had committed both first-degree theft of property and second-degree burglary. The circuit court also detailed the evidence it relied on to find that Walker had committed those new offenses and noted that confinement was necessary "to prevent further criminal activity" and "to avoid depreciating the

seriousness of the violation" (C. 23, 27-28). This appeal follows.

Standard of Review

"'A probation-revocation hearing is a bench trial and the trial court is the sole fact-finder.'" Smiley v. State, 52 So. 3d 565, 568 (Ala. 2010) (quoting Ex parte Abrams, 3 So. 3d 819, 823 (Ala. 2008)).

> "'Absent a clear abuse of discretion, a reviewing court will not disturb a trial court's conclusions in a probation-revocation proceeding, including the determination whether to revoke, modify, or continue the probation. A trial court abuses its discretion only when its decision is based on an erroneous conclusion of law or where the record contains no evidence on which it rationally could have based its decision.'"

McCain v. State, 33 So. 3d 642, 647 (Ala. Crim. App. 2009) (quoting Holden v. State, 820 So. 2d 158, 160 (Ala. Crim. App. 2001) (citations omitted)). Furthermore, we review de novo those cases that involve only issues of law and the application of the law to the undisputed facts. Ex parte Walker, 928 So. 2d 259, 262 (Ala. 2005). With this in mind we address Walker's claims on appeal.

Discussion

On appeal, Walker raises two arguments. First, Walker says that his "right[] to due process [was] violated by the [circuit] court and Probation and Parole Office not following the provisions of Rule 27.1[, Ala. R. Crim. P.,] because [he] was never instructed on probation and did not receive an order incorporating all of his conditions of probation." (Walker's brief, p. 5.) Second, Walker says that "the [circuit] court erred by committing a gross abuse of discretion in ordering [his] probation revoked based upon the facts and testimony presented at the probation revocation hearing." (Walker's brief, p. 5.) Both claims are without merit.

I.

Walker first argues that his "right to due process was violated ... because he had not been properly advised of the terms and conditions of his probation" as "[t]he record is [de]void of any evidence that would tend to show that not committing a new criminal offense was a condition of [his] probation, whether express or implied." (Walker's brief, p. 17-20.)

At the outset of his probation-revocation hearing, Walker moved to "dismiss these proceedings based upon the fact that he has never been instructed on probation" and "never signed any paperwork placing him on probation." (R. 8.) The circuit court denied Walker's motion, finding that it is "implicit that either reporting or not committing a new offense is ... mandatory in every probation." (R. 8-9.)

Rule 27.6(e), Ala. R. Crim. P., provides that, "[i]f the court finds that a violation of the conditions or regulations of probation or instructions occurred, it may revoke, modify, or continue probation" and provides that "[p]robation shall not be revoked for violation of a condition or regulation if the probationer had not received a written copy of the condition or regulation." (Emphasis added.) But this Court has held that,

> "'beyond any expressed condition of probation, there exists the implied condition that the probationer live and remain at liberty without violating the law. Moore v. State, 494 So. 2d 198 (Ala. Cr. App. 1986); Ellard v. State, 474 So. 2d 743 (Ala. Cr. App. 1984), aff'd, 474 So. 2d 758 (Ala. 1985).'"

McKinnon v. State, 883 So. 2d 253, 254 (Ala. Crim. App. 2003) (quoting Weaver v. State, 515 So. 2d 79, 82 (Ala. Crim. App.

1987)). In other words, a circuit court may revoke a defendant's probation when it is shown that he has committed a new offense, regardless of whether the defendant received written notice that not committing a new offense was a condition of his probation. See Croshon v. State, 966 So. 2d 293, 295 (Ala. Crim. App. 2007) (holding that the "revocation of Croshon's probation was proper because, even though Croshon had not yet been given the express terms of his probation, refraining from committing further criminal offenses is an implied condition of every probationary sentence"); see also Wilcox v. State, 395 So. 2d 1054, 1056 (Ala. 1981).

Here, the circuit court revoked Walker's probation because it was reasonably satisfied from the evidence presented at the hearing that Walker had committed two new offenses--first-degree theft of property and second-degree burglary. Because the circuit court was reasonably satisfied that Walker committed those new offenses, and because not committing a new offense is an implied condition of every probation, it was unnecessary for the circuit court to find that Walker had been expressly notified that not violating the

law was a condition of his probation. Thus, Walker's first claim is without merit.

II.

Walker also argues that the circuit court erred when it revoked his probation "based upon the facts and testimony presented at the probation revocation hearing" because (1), as to the first-degree-theft charge, "there were disputed facts" and there was "a question of whether [he] had permission to obtain items of the victims' property" (Walker's brief, p. 23); and (2), as to the second-degree-burglary charge, "the evidence presented to the court indicates that there was a question as to whether [he] was in a dwelling without authorization" and "the only evidence that [he] made unauthorized entry into the dwelling was hearsay in nature." (Walker's brief, p. 25.)

To determine whether the evidence presented at a probation-revocation hearing is sufficient to revoke a defendant's probation for committing a new offense, the Alabama Supreme Court has set out the following standard:

> "'"'Probation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime. A

> proceeding to revoke probation is not a criminal prosecution, and we have no statute requiring a formal trial. Upon a hearing of this character, the court is not bound by strict rules of evidence, and the alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt.'"'
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> "'Martin v. State, 46 Ala. App. 310, 312, 241 So. 2d 339, 341 (Ala. Crim. App. 1970) (quoting State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967) (citation omitted)). Under that standard, the trial court need "only be reasonably satisfied from the evidence that the probationer has violated the conditions of his probation." Armstrong v. State, 294 Ala. 100, 103, 312 So. 2d 620, 623 (1975). Absent a clear abuse of discretion, a reviewing court will not disturb the trial court's conclusions. See Moore v. State, 432 So. 2d 552, 553 (Ala. Crim. App. 1983), and Wright v. State, 349 So. 2d 124, 125 (Ala. Crim. App. 1977).'

"Ex parte J.J.D., 778 So. 2d at 242. See Rule 27.6(d)(1), Ala. R. Crim. P. (providing that at a revocation hearing the 'court may receive any reliable, relevant evidence not legally privileged, including hearsay,' and the court must be reasonably satisfied from the evidence that a violation of probation occurred before revoking probation). Whether to admit hearsay evidence at a probation-revocation hearing is within the discretion of the court. Puckett v. State, 680 So. 2d 980, 981 (Ala. Crim. App. 1996). However,

> "'[i]t is well settled that hearsay evidence may not form the sole basis for revoking an individual's probation. See

> Clayton v. State, 669 So. 2d 220, 222 (Ala. Cr. App. 1995); Chasteen v. State, 652 So. 2d 319, 320 (Ala. Cr. App. 1994); and Mallette v. State, 572 So. 2d 1316, 1317 (Ala. Cr. App. 1990). "The use of hearsay as the sole means of proving a violation of a condition of probation denies a probationer the right to confront and to cross-examine the persons originating the information that forms the basis of the revocation." Clayton, 669 So. 2d at 222.'

"Goodgain v. State, 755 So. 2d 591, 592 (Ala. Crim. App. 1999).

"To summarize, at a probation-revocation hearing a circuit court must examine the facts and circumstances supporting each alleged violation of probation. The court may consider both hearsay and nonhearsay evidence in making its determination. The hearsay evidence, however, must be reliable,[2] and it cannot be the sole evidence supporting the revocation of probation. Thus, a circuit court must assess the credibility of the particular witnesses at the probation-revocation hearing, the reliability of the available evidence, and the totality of the evidence in each individual case to determine whether it is reasonably satisfied that the probationer has violated a term of his or her probation and that revocation is proper. Moreover, an appellate court will disturb a circuit court's decision only if the record establishes that the circuit court exceeded the scope of its discretion.

"_____

"[2]Cf. Hampton v. State, 203 P.3d 179, 185 (Okla. Crim. App. 2009) ('[W]e conclude that the due process confrontation requirement applicable to revocation[] matters will generally be satisfied when a trial court determines that proffered hearsay

> bears substantial guarantees of trustworthiness or otherwise has sufficient indicia of reliability.')."

Sams v. State, 48 So. 3d 665, 667-68 (Ala. 2010).

Recently, in Ex parte Dunn, 163 So. 3d 1003 (Ala. 2014), the Supreme Court refined this standard, explaining that, when 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. In that case, the Supreme Court reversed this Court's decision upholding the circuit court's revocation of Dunn's probation for committing a new offense because "the State [had] not corroborated by nonhearsay evidence the hearsay evidence connecting the pants, and by extension Dunn, to the burglary." 163 So. 3d at 1006. See also Wright v. State, [Ms. CR-18-0003, July 12, 2019] ___ So. 3d ___, ___ (Ala. Crim. App. 2019) (reversing the circuit court's revocation of Wright's probation for committing a new offense because the nonhearsay evidence that Wright was merely present at a party at the time a shooting occurred did not sufficiently connect him to the alleged murder); and Miller v. State, [Ms. CR-17-0644, Sept.

7, 2018] ___ So. 3d ___, ___ (Ala. Crim. App. 2018) (reversing the circuit court's revocation of Miller's probation because "the State failed to present any nonhearsay evidence indicating that Miller had, in fact, committed the alleged arson").

In sum, Sams and Dunn establish that hearsay is admissible at a probation-revocation hearing to show that a defendant committed a new offense and that the circuit court can rely on hearsay to revoke a defendant's probation. But those cases warn that hearsay cannot serve as the sole basis for revoking a defendant's probation, and instruct that, although the State does not have to prove every element of the alleged new offense with nonhearsay evidence,[3] the State must present sufficient nonhearsay evidence connecting the defendant to the commission of the alleged new offense. Having set out the appropriate standard under which to review this case, we now consider whether the circuit court properly revoked Walker's probation.

[3]See Sams, 48 So. 3d at 670 (finding sufficient evidence to revoke Sams's probation when the State presented only hearsay evidence as to an essential element of the alleged new offense--i.e., the minor's age).

As set out above, Walker's probation officer filed a delinquency report alleging that, while on probation, Walker committed a first-degree theft of property and a second-degree burglary. To find that Walker violated his probation by committing a first-degree theft of property, the circuit court had to be reasonably satisfied that Walker "knowingly obtain[ed] or exert[ed] control over the property of another, with the intent to deprive the owner of his or her property" and that the value of that property exceeded $2,500. §§ 13A-8-2(a)(1) and 13A-8-3(a), Ala. Code 1975. To find that Walker violated his probation by committing a second-degree burglary, the circuit court had to be reasonably satisfied that Walker "unlawfully enter[ed] a lawfully occupied dwelling-house with the intent to commit a theft or a felony therein." § 13A-7-6(b), Ala. Code 1975.

Turning first to the allegation that Walker violated his probation by committing a first-degree theft, Walker argues that the circuit court erred in revoking his probation because, Walker says, there was "a question of whether [he] actually had permission to obtain the items from the [Millers'] property"; that Walker testified that "a large

quantity of tools belonging to the [Millers] had been left outside, unsecured at their home"; that there was no documentation to prove ownership of the items found at the Grimes Street house; and that Kenneth Powell also "had the knowledge necessary to obtain these subject items and bring them to the" Grimes Street house. (Walker's brief, p. 23.) In other words, Walker does not argue that his probation was revoked based solely on hearsay regarding the theft-of-property offense, nor does he argue that the State failed to present sufficient nonhearsay evidence connecting him to the theft. Instead, Walker contends that the circuit court could not revoke his probation because, he says, the evidence concerning the first-degree-theft offense was in conflict or was insufficient.[4]

The law is clear that a conflict in the evidence does not render the State's evidence insufficient to support a

[4]Walker did not argue in the circuit court that the revocation of his probation for committing a first-degree theft was based solely on hearsay. Thus, that claim is not preserved for appellate review. See Emerson v. State, [Ms. CR-17-1108, Mar. 8, 2019] ___ So. 3d ___, ___ (Ala. Crim. App. 2019) (finding that Emerson's claim that his probation revocation was based solely on hearsay was not preserved for appellate review because it was not first argued in the circuit court).

revocation of a defendant's probation; rather, it merely creates a question for the trier of fact to resolve. This Court addressed the same issue in Bruno v. State, 599 So. 2d 635, 636 (Ala. Crim. App. 1992). In Bruno, the "appellant assert[ed] that the evidence was insufficient to support the revocation of his probation, apparently in the mistaken belief that contradicted evidence would not support a finding of fact." Id. at 636. In affirming Bruno's revocation, this Court held that "[a]ny conflict in the evidence presented posed a question for the trier of fact to resolve." Id. at 636.

Here, the State's evidence established that Walker went to the Millers' house; that he removed both wood and tools from their property; that Walker admitted to taking the wood from the Millers' property; that the wood and tools Walker took from the Millers' property were worth "thousands of dollars"; that Walker was in possession of the wood and tools when Det. Dube went to speak with him at the Grimes Street house; that the wood and tools found at the Grimes Street house were identified by the Millers as belonging to them; and that Walker denied knowing how the tools got to his residence.

Although Walker correctly points out that there was a conflict in the evidence concerning whether Walker had permission to take the wood from the Millers' property, the circuit court resolved that conflict adversely to Walker, and we cannot say it abused its discretion in doing so. Thus, the circuit court did not err in finding that it was reasonably satisfied that Walker violated his probation by committing a first-degree theft of property.

Turning next to the allegation that Walker violated his probation by committing a second-degree burglary, Walker argues that the circuit court erred when it indicated that it was reasonably satisfied that Walker had committed that offense because "the evidence presented to the court indicates that there was a question as to whether [he] was in a dwelling without authorization" and "the only evidence that [he] made unauthorized entry into the dwelling was hearsay in nature." (Walker's brief, p. 25.) In other words, Walker challenges only the State's evidence as to the unauthorized-entry element of second-degree burglary and argues that, because Charles's statement about Walker's entry into the house was hearsay, the

circuit court could not revoke his probation on the basis that he committed a second-degree burglary while on probation.

This Court agrees with Walker that "unauthorized entry" is an element the State must prove to show that a defendant has committed a second-degree burglary. But the State is not prohibited from proving that element through hearsay testimony at a probation-revocation hearing. See Sams, 48 So. 3d at 670 (finding sufficient evidence to revoke Sams's probation when the State presented only hearsay evidence as to an essential element of the alleged new offense--i.e., the minor's age). Nor is a circuit court prohibited from relying on hearsay evidence of the "unauthorized-entry" element of second-degree burglary to find that it is reasonably satisfied that a defendant has committed that offense. To properly revoke a defendant's probation for committing a new offense the trial court cannot rely on hearsay alone as a basis for revoking a defendant's probation. In addition to proving all elements by hearsay or nonhearsay evidence, there must exist nonhearsay connecting the defendant to the offense. Both requirements are satisfied here.

Although the State's evidence as to the second-degree-burglary charge was based largely on hearsay, the State presented a mixture of hearsay and nonhearsay evidence as to that offense at the probation-revocation hearing. The nonhearsay evidence it presented sufficiently connected Walker to the second-degree burglary. Specifically, the State presented nonhearsay evidence from Det. Sweeney that Walker admitted to entering Charles's house on the morning of February 11, 2018, and presented nonhearsay evidence from Det. Sweeney that he saw Walker's girlfriend retrieve the cellular telephones that were taken from Charles's house from a bedroom shared by her and Walker. Although this nonhearsay evidence by itself does not prove that Walker committed a second-degree burglary, it is sufficient to connect Walker to the offense. This connection of a defendant to the commission of a new offense is what is required from the nonhearsay evidence, not nonhearsay proof of every element of an alleged probation violation. Thus, there was sufficient nonhearsay evidence upon which the circuit court could rely to find that it was reasonably satisfied that Walker violated his probation by

committing a second-degree burglary; thus, the circuit court properly revoked his probation.

Conclusion

Because the condition of his probation that Walker violated was the implied condition that he not commit any new offense, it was not necessary that he receive notice of that condition of his probation. Furthermore, because the State's evidence was sufficient to establish that Walker had violated his probation by committing a first-degree theft of property and a second-degree burglary, the circuit court did not err when it revoked Walker's probation.

Accordingly, the judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and Kellum and Minor, JJ., concur. McCool, J., concurs in part and dissents in part, with opinion.

McCOOL, Judge, concurring in part and dissenting in part.

I respectfully dissent from the majority's decision to affirm the circuit court's revocation of Walker's probation insofar as it revoked his probation on his misdemeanor assault conviction. Otherwise, I fully concur with the main opinion.

As the main opinion recognizes, Walker's split sentence for his misdemeanor assault conviction was illegal. ___ So. 3d at ___ n.1. As I explained in my dissent in McGowan v. State, [Ms. CR-18-0173, July 12, 2019] ___ So. 3d ___ (Ala. Crim. App. 2019), I do not believe that the illegality of a split sentence is rendered moot by the circuit court's subsequent decision to revoke the defendant's probation. Thus, I believe the proper remedy is to vacate the circuit court's order revoking Walker's probation on the misdemeanor assault conviction and remand the case to the circuit court so that Walker can be given a legal sentence on that conviction.

Otherwise, I fully concur with the main opinion's reasoning and its affirmance of the circuit court's revocation of Walker's probation as to his other convictions. Accordingly, I concur in part and dissent in part.