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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0905

Joshua Jason Lara

v.

State of Alabama

Appeal from Madison Circuit Court
(CC-18-1532.70)

KELLUM, Judge.

The appellant, Joshua Jason Lara, appeals from the circuit court's revocation of his probation. In August 2018, Lara was convicted of identity theft and was sentenced to 36

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months' imprisonment; that sentence was suspended and Lara was placed on 3 years' supervised probation.

On September 18, 2018, Lara's probation officer filed a delinquency report alleging that Lara had violated the terms and conditions of his probation because of his arrest on new criminal charges of possession of a controlled substance, promoting prison contraband in the second degree, and possession of drug paraphernalia. On April 5, 2019, Lara's probation officer filed a supplemental delinquency report alleging additional violations that included Lara's arrest on new criminal charges of trafficking in stolen identities, fraudulent use of a credit/debit card, and failing to report. Based on Lara's violations, the probation officer recommended that the circuit court fully revoke Lara's probation.

On May 8, 2019, and May 16, 2019, the circuit court conducted a probation-revocation hearing at which Lara was represented by counsel. At the conclusion of the hearing, the circuit court found that the State presented insufficient evidence that Lara committed the new criminal charges as alleged in the delinquency report. The court, however, was reasonably satisfied based on the evidence presented that Lara

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had failed to report to his probation officer. Based on this finding, the circuit court entered an order on May 16, 2019, revoking Lara's probation based on Lara's failure to report and "order[ing] [Lara] to complete the Crime Bill Program and upon completion be reinstated to probation." (C. 36.) The circuit court subsequently amended its May 16, 2019, order on June 6, 2019, to order Lara to complete the substance-abuse program before his return to probation instead of the crime-bill program. Lara timely filed a motion to reconsider in which he argued, among other things, that the circuit court erred by not imposing a 45-day "dunk" sanction pursuant to § 15-22-54(e)(1), Ala. Code 1975. The circuit court denied the motion to reconsider; this appeal followed.

Lara's sole contention on appeal is that the circuit court erred when it did not impose a 45 day "dunk" pursuant to § 15-22-54(e)(1) after it revoked Lara's probation based solely on a technical violation, i.e., Lara's failure to report.

This Court recently addressed this issue in Jacobs v. State, [Ms. CR-18-0554, July 12, 2019] ___ So. 3d ___ (Ala. Crim. App. 2019). In Jacobs, the State moved to revoke

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Jacobs's probation based on his arrest on a new criminal charge and his failure to complete the Alabama Certain Enforcement Supervision Program ("ACES program"). Following a hearing, the trial court found insufficient evidence that Jacobs had committed a new criminal offense but revoked Jacobs's probation based on his failure to complete the ACES program. The court ordered Jacobs to serve the balance of his sentence in the custody of the Alabama Department of Corrections. On appeal, Jacobs argued that the trial court erred when it fully revoked his probation based on a "mere arrest or filing of charges" and that the court's only option was to impose a 45-day "dunk" pursuant to § 15-22-54(e)(1). Jacobs, ___ So. 3d at ___. This Court agreed and held that the full revocation of Jacobs's probation violated § 15-22-54(e)(1) because the trial court found that Jacobs had committed only a technical violation. Jacobs, ___ So. 3d at ___.

Indeed, § 15-22-54(e)(1) provides, in pertinent part:

"(e) After conducting a violation hearing and finding sufficient evidence to support a probation violation, the court may revoke probation to impose a sentence of imprisonment, and credit shall be given for all time spent in custody prior to revocation. ... However, in all cases, excluding

violent offenses defined pursuant to Section 12-25-32 and classified as a Class A felony, and sex offenses, defined pursuant to Section 15-20A-5, the court may only revoke probation as provided below:

"(1) Unless the underlying offense is a violent offense as defined in Section 12-25-32 and classified as a Class A felony, when a defendant under supervision for a felony conviction has violated a condition of probation, other than arrest or conviction of a new offense or absconding, the court may impose a period of confinement of no more than 45 consecutive days to be served in the custody population of the Department of Corrections."

(Emphasis added.)

The State argues on appeal that this case is distinguishable from Jacobs because, it says, the circuit court did not fully revoke Lara's probation and order Lara to serve the balance of his sentence in prison but instead ordered Lara to complete the substance-abuse program before his return to probation. According to the State, the circuit court acted within its discretion under § 15-22-54(f) when it ordered Lara to complete substance-abuse treatment.

Contrary to the State's contention otherwise, our holding in Jacobs is applicable in this case. Here, the circuit court revoked Lara's probation based on a technical violation and ordered Lara to return to prison to complete the substance-

abuse program. Although the circuit court did not order Lara to serve the balance of his sentence in prison following the revocation of his probation, Lara's probation was revoked and he was sent to prison for an undetermined length of time.¹ Further, § 15-22-54(f), Ala. Code 1975, authorizes action on the part of a probation officer and not a circuit court as the State suggests on appeal. Section 15-22-54(f) states, in pertinent part, that, "when a probationer violates his or her probation terms and conditions imposed by the court, his or her probation officer may, after administrative review and approval by the officer's supervisor, require the probationer to submit to ... substance abuse treatment." (Emphasis added.) Thus, § 15-22-54(f) is not applicable in this case.

The circuit court's revocation of Lara's probation and order of confinement to complete the substance-abuse program violated § 15-22-54(e)(1) because the court found Lara committed only a technical violation. Accordingly, the circuit court's May 16, 2019, order revoking Lara's probation and its June 6, 2019, order amending the May 16 order are reversed,

¹The record does not indicate the duration of the substance-abuse program or how long it would take Lara to complete the program.

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and the case is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

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