

REL: July 10, 2020

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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-19-0006

Malik Donte Muhammad

v.

State of Alabama

Appeal from Jefferson Circuit Court
(C-14-3514.72)

MINOR, Judge.

Malik Donte Muhammad appeals the revocation of his probation.¹ In his appeal, Muhammad argues (1) that he was

¹In 2015, Muhammad pleaded guilty to second-degree burglary, see § 13A-7-6, Ala. Code 1975. The circuit court sentenced Muhammad to 10 years' imprisonment; that sentence was suspended, and Muhammad was placed on 3 years' supervised probation.

denied a probation-revocation hearing, and (2) that the circuit court's order failed to state the reasons for the revocation and the evidence relied upon. Because there is no transcript of a revocation hearing, we reverse and remand.

On March 25, 2019, Muhammad's probation officer filed a delinquency report charging Muhammad with violating the conditions of his probation by absconding.² (Supp. R. 15-16.) On August 19, 2019, during an initial appearance, the circuit court advised Muhammad of the absconding charge in the delinquency report; informed him of his right to request a hearing within 10 days; informed him of his right to have a hearing on the alleged violation in person, with the right to present relevant witnesses and documentary evidence; informed him of his right to retain and have counsel at the hearing and to appointed counsel if he was indigent; informed him of his right to confront and cross-examine any adverse witnesses; and informed him of his right to remain silent. (Supp. R. 6, 9.) The circuit court set this cause for a hearing on August 26, 2019, and appointed counsel to represent Muhammad.

²The record shows that Muhammad signed and dated the delinquency report.

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On August 26, 2019, the circuit court issued an order reading as follows:

"The Defendant pleads true to the violations contained in the Delinquency Report dated March 25, 2019 filed by the Probation Office.

"After hearing arguments presented by all parties, the Court is reasonably satisfied that the Defendant has violated the conditions of his probation and the Defendant's probation is hereby revoked.

"The Defendant's ten (10) year sentence is hereby placed in effect. The Defendant is to receive jail credit for the one (1) year he previously served and any time he has spent in jail awaiting disposition of this case."

(Supp. R. 7.)

After Muhammad appealed, this Court ordered the circuit clerk to supplement the record on appeal with a transcript of the proceedings in case no. CC-14-3514.72. In response, the court reporter sent a letter stating that "the hearings held on August 19, 2019 and August 26, 2019 were not on the record; therefore, there are no transcripts of these hearings available." (Supp. R. 5.)

On appeal, Muhammad argues that the circuit court denied him a probation-revocation hearing because, he says, the record does not show that his admission was voluntary or that

he understood the nature of the alleged violations. He points to the fact that no transcript was made of the proceedings.

"'In Williams v. State, 982 So. 2d 615 (Ala. Crim. App. 2007), this Court addressed a similar situation involving the lack of a transcript in the record on appeal. In Williams, the defendant argued on appeal that "'the lack of a colloquy and/or transcript indicating that [he] knowingly "confessed" the violation of the terms of his probation demands a remand for further findings.'" 982 So. 2d at 616 (quoting Williams's brief). The case-action summary in Williams indicated that the circuit court had conducted a probation-revocation hearing before revoking the defendant's probation. However, the record on appeal did not include a transcript of the revocation hearing. The defendant moved to supplement the record on appeal with a transcript of the revocation hearing. The circuit court denied the motion to supplement because no transcript of the probation-revocation hearing existed. This court reversed the circuit court's revocation order, stating:

"'"In this case, the revocation hearing was not transcribed. Also, the written revocation order does not include any facts regarding the voluntariness of the [defendant]'s admission. Therefore, we cannot properly review the [defendant]'s claim regarding the voluntariness of his admission. Accordingly, we must reverse the circuit court's judgment revoking the [defendant]'s probation and

remand this case for the circuit court to conduct a new revocation hearing."

"Williams v. State, 982 So. 2d at 616-17."

Hyché v. State, [Ms. CR-18-0899, Feb. 7, 2020] ___ So. 3d ___, ___ (Ala. Crim. App. 2020) (considering the issue whether it was clear that the circuit court actually conducted a revocation hearing because there was no transcript of the hearing for the Court of Criminal Appeals to review).

Here, without a transcript of the revocation hearing, we cannot determine the voluntariness of Muhammad's admission or that Muhammad understood the nature of the alleged violations. Thus, we reverse the circuit court's order revoking Muhammad's probation and remand the case for the circuit court to conduct a probation-revocation hearing that is recorded and transcribed for this Court's review. Any future order revoking Muhammad's probation should comply with Rule 27.6(f), Ala. R. Crim. P., and state the reasons for revocation and the evidence relied upon. "In the event [Muhammad] is dissatisfied following his new probation-revocation hearing, he should file a new appeal to this Court." ___ So. 3d ___.

REVERSED AND REMANDED.

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Windom, P.J., and Kellum, McCool, and Cole, J.J., concur.