REL: October 15, 2021

Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0203

Matthew Ray Bothwell

v.

State of Alabama

Appeal from Etowah Circuit Court
(CC-14-549.70)

MINOR, Judge.

In this appeal, we decide whether § 15-18-175(d), Ala. Code 1975, requires a court to include in a written order revoking a community-corrections sentence specific language finding that the

alternatives to a full custodial revocation are inadequate. Under the circumstances of this case, we hold that § 15-18-175(d) does not require specific written findings, and we affirm the circuit court's judgment.[1]

In 2016, Matthew Ray Bothwell pleaded guilty to second-degree robbery, see § 13A-8-42, Ala. Code 1975, and was sentenced to 20 years' imprisonment; that sentence was split, and he was ordered to serve 5 years. The split sentence included a three-year prison term followed by two years of community corrections, which would be followed by three years probation. Bothwell completed the prison portion of his split sentence and then began the community-corrections portions. On April 9,

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[1]Section 15-18-175(d)(1)-(2), Ala. Code 1975, provides:

> "d. The court shall not revoke the sentence and order the confinement to prison of the offender unless the court finds, on the basis of the original offense and the offender's intervening conduct, that either of the following apply:
>
> "1. No measure short of confinement will adequately protect the community from further criminal activity by the offender.
>
> "2. No measure short of confinement will avoid depreciating the seriousness of the violation."

2019, Bothwell was transferred to St. Clair County Community Corrections for supervision, under the Alternative Supervision Program.

In January 2020, the State moved to remove Bothwell from the Alternative Supervision Program based on his failure to comply with the terms and conditions of community corrections in that he was arrested for new criminal conduct (trafficking in methamphetamine and promoting prison contraband). The circuit court, on November 10, 2020, held a revocation hearing via "Zoom" video conferencing.[2]

Following the hearing, the circuit court, by written order, revoked Bothwell's probation and held, in pertinent part:

> "[T]he Court finds that [Bothwell] has violated the conditions of his alternative sentence as set forth in the Delinquent Charges, more specifically, Charge No. 1, New Offense–Trafficking Methamphetamine, and Charge No. 2, New Offense–Promoting Prison Contraband, [Bothwell] denied Charge #1 and Charge #2 in open Court.
>
> "After due consideration, the Court finds substantial evidence that [Bothwell] has violated the terms of his alternative sentence and it is hereby ORDERED, ADJUDGED AND DECREED BY THE COURT that [Bothwell's] alternative sentence is hereby REVOKED and [Bothwell] is to serve his

[2]"Zoom" is an Internet platform for video and audio teleconferencing.

> underlying sentence of January 25, 2016 of (20) years in the State Penitentiary, said sentence is hereby re-instated as of this date."

(C. 28.) Bothwell appeals.

On appeal, Bothwell argues that the circuit court erred by revoking his community-corrections sentence. Bothwell argues that, because the circuit court's order did not include language finding that alternative measures to revocation of the sentence were inadequate, the court's order was legally insufficient under § 15-18-175, Ala. Code 1975. (Bothwell's brief, pp. 7-11.)

> " [[The Alabama Supreme Court] first note[d] that the revocation of a sentence served under a community-corrections program is treated the same as a probation revocation. See § 15–18–175(d)(3)b., Ala. Code 1975 ('A revocation hearing shall be conducted before the court prior to revocation of the community corrections sentence. The court shall apply the same due process safeguards as a probation revocation proceeding and may modify or revoke the community punishment sentence and impose the sentence that was suspended at the original hearing or any lesser sentence....'); Richardson v. State, 911 So. 2d 1114 (Ala. Crim. App. 2004) (treating the revocation of a community-corrections sentence as a probation revocation); see also Jackson v. State, 867 So. 2d 365 (Ala. Crim. App. 2003) (providing that the rules of preservation apply to probation-revocation proceedings unless no revocation hearing is conducted, the record does not contain

> an adequate written or oral revocation order, or the probationer was not informed of his right to counsel)."

Ex parte Hill, 71 So. 3d 3, 8–9 (Ala. 2009) (emphasis added)).

> "Rule 27.6(f), Ala. R. Crim. P., provides that, when revoking probation, '[t]he judge shall make a written statement or state for the record the evidence relied upon and the reasons for revoking probation.' In McCoo v. State, 921 So. 2d 450, 462 (Ala. 2005), the Alabama Supreme Court relaxed the requirements of a written probation-revocation order and this court's review of that order:
>
> > " '[T]he requirement of Wyatt [v. State, 608 So. 2d 762 (Ala. 1992),] and its associated cases—that the trial court enter a written order stating its reasons for the revocation and the evidence relied upon regardless of the state of the record—is no longer applicable. Henceforth, the Court of Criminal Appeals may determine, upon a review of the record, whether the requisite Rule 27.6(f)[, Ala. R. Crim. P.,] statements are presented by that record. Thus, the Court of Criminal Appeals may examine the record and conclude that "oral findings, if recorded or transcribed, can satisfy the requirements of Morrissey [v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972),] when those findings create a record sufficiently complete to advise the parties and the reviewing court of the reasons for the revocation of supervised release and the evidence the decision maker relied upon." [United States v.] Copeland, 20 F.3d [412,] 414 [(11th Cir.1994)].'

"In Ex parte Garlington, 998 So. 2d 458 (Ala. 2008), the Alabama Supreme Court reiterated the importance of its holding in McCoo, stating:

> " 'In order to meet the requirements of Rule 27.6(f), as well as those of constitutional due process, it is "the duty of the trial court to take some affirmative action, either by a statement recorded in the transcript or by written order, to state its reasons for revoking probation, with appropriate reference to the evidence supporting those reasons." McCoo [v. State], 921 So. 2d [450,] 462 [(Ala. 2005)] (emphasis added).'

"Garlington, 998 So. 2d at 458–59 (Ala. 2008)."

Williams v. State, 138 So. 3d 342, 344 (Ala. Crim. App. 2013).

The record shows the following exchange:

"[Defense counsel]: Okay. Judge, in St. Clair County, on those charges, the DA is willing to entertain and allow him to go to a rehab. And Your Honor, we would request the same here. I think that a rehab rather than an outright revocation to a 20-year sentence, and see how he does, would be more beneficial to both him and to society, Judge.

"THE COURT: Okay. What was the underlying charge, [prosecutor], he's on community corrections with?

"[Prosecutor]: Originally, a robbery first degree. He pled down to robbery second. Your Honor.

"THE COURT: All right. Anything else?

> "[Defense counsel]: No, sir. Your Honor.
>
> "THE COURT: State of Alabama recommending revocation?
>
> "[Prosecutor]: Yes, Your Honor.
>
> "THE COURT: All right. Based upon the testimony, the Court hereby revokes [Bothwell] to his underlying sentence. [Defense counsel], you remain appointed in this case. If [Bothwell] wishes to file an appeal, he has 42 days from the date the order is entered. And I want that to be placed in the revocation order that [defense counsel] remains his counsel and if [Bothwell] wishes to appeal, he has 42 days from the date of the revocation order."

(R. 38-39 (emphasis added).)

In Sykes v. State, 850 So. 2d 379 (Ala. Crim. App. 2002), this Court rejected a probationer's argument that a probation-revocation order was "inadequate because it fail[ed] to indicate that no measure short of confinement [was] appropriate." 850 So. 2d at 381. This Court held: "[A] revocation order that states 'the evidence relied upon and the reasons for revoking probation' is sufficient. Rule 27.6(f), Ala. R. Crim. P." 850 So. 2d at 381. Bothwell argues that Sykes is distinguishable because it "is a probation revocation case." He argues that, unlike in a proceeding to revoke a community-corrections sentence, a trial court in a

probation-revocation proceeding is not required to consider alternatives to confinement. Bothwell's arguments, however, are unpersuasive.

The statute that Bothwell relies on–§ 15-18-175(d)–requires a court to make certain findings before revoking a community-corrections sentence. But neither § 15-18-175(d) nor Rule 27.6(f), Ala. R. Crim. P., requires a court to make those findings in a written order. The record shows that at the revocation hearing the circuit court heard argument from defense counsel about whether "rehab" (as an alternative to revocation) "would be more beneficial to both [Bothwell] and to society." The circuit court, in revoking Bothwell's community-corrections sentence, rejected those arguments–and, in doing so, implicitly made the findings that § 15-18-175 requires. "Trial judges ... are presumed to know the law and to follow it in making their decisions." Ex parte Slaton, 680 So. 2d 909, 924 (Ala. 1996).

For these reasons, we affirm the circuit court's judgment revoking Bothwell's community-corrections sentence.

AFFIRMED.

Windom, P.J., and McCool and Cole, JJ., concur. Kellum, J., concurs in the result.