REL: October 8, 2021

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Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0526

Derrick Levall Anderson

v.

State of Alabama

Appeal from Montgomery Circuit Court
(CC-19-658)

KELLUM, Judge.

Derrick Levall Anderson appeals the Montgomery Circuit Court's revocation of his probation.

In June 2019, Anderson pleaded guilty to violating the Alabama Sex Offender Registration and Community Notification Act ("ASORCNA"), § 15-20A-1 et seq., Ala. Code 1975, by failing to register his address during his birth month and every three months thereafter.[1] He was sentenced to 180 months' imprisonment; that sentence was split, and he was ordered to serve 36 months in confinement, which part of the sentence was suspended, and he was placed on probation for 24 months.

On February 26, 2021, the State filed a motion to revoke probation and Anderson's probation officer filed a delinquency report, both alleging that Anderson had violated the terms and conditions of his probation by committing the new offense of second-degree rape. A supplemental delinquency report[2] alleged that Anderson had further violated the terms and conditions of his probation by violating ASORCNA, specifically, by

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[1]Anderson was subject to the provisions of ASORCNA by virtue of his 2011 conviction for second-degree rape.

[2]The supplemental report is not included in the record on appeal. However, testimony was presented about the report at the revocation hearing.

failing to register a change in address. A probation-revocation hearing was conducted on March 9, 2021.

At the hearing, Jasmine Morton, Anderson's probation officer, testified that Anderson had committed the new offenses of second-degree rape and violating ASORCNA. She described the new offenses as "very high level" and recommended that Anderson's probation be revoked. (R. 8.) On cross-examination, Morton stated that the only information she had about the new offenses was what she had been told by H.S. Williams, a detective with the Montgomery Police Department. Det. Williams testified that on February 25, 2021, she conducted a "home-compliance check" at the address Anderson had registered with law enforcement, pursuant to ASORCNA, as his home address. (R. 20.) Det. Williams knocked on the front door and James Davis, who identified himself as Anderson's cousin, answered. Anderson was not present. When asked if Anderson lived there and if Davis could show her Anderson's room, Anderson's mail, or a utility bill with Anderson's name on it, Davis said that he could not because Anderson did not live there. On cross-examination, Det. Williams stated that she had charged Anderson with

violating ASORCNA for failing to register a change in address based on Anderson's absence at the address when she did the home-compliance check and Davis's statement that Anderson did not live there. T.S. James, a corporal with the Montgomery Police Department, testified that the rape charge arose after patrol officers executed a traffic stop of Anderson's vehicle in January 2021, and found a 15-year-old girl in the vehicle. The subsequent investigation revealed that the girl had snuck out of her parents' house the night before to meet with Anderson. The girl told Cpl. James that she and Anderson had had sex in a hotel in Montgomery.

At the conclusion of the testimony, Anderson argued that the only evidence indicating that he had committed either of the new offenses was hearsay and that his probation could not be revoked based on hearsay alone. The State effectively conceded that the only evidence indicating that Anderson had committed rape was hearsay, but argued that Det. Williams's personal observation that Anderson was not at his registered address was not hearsay and was sufficient to establish the ASORCNA violation. The trial court agreed with the State and revoked Anderson's probation on the ground that he had violated the terms and conditions of

his probation by committing the new offense of failing to register a change in address under ASORCNA. The court found insufficient nonhearsay evidence indicating that Anderson had committed the new offense of second-degree rape.

On appeal, Anderson argues that the trial court erred in revoking his probation because, he says, the only evidence indicating that he had violated ASORCNA was hearsay. According to Anderson, although he was not present at his registered address when Det. Williams conducted the home-compliance check, his absence at that time does not, by itself, indicate that he did not live at the address and that he had failed to register a change in address. Rather, Anderson maintains, the only evidence indicating that he did not live at the address was Davis's hearsay statement to Det. Williams. The State agrees, and so do we.

"It is well settled that hearsay evidence may not form the sole basis for revoking an individual's probation." Goodgain v. State, 755 So. 2d 591, 592 (Ala. Crim. App. 1999). However, "hearsay evidence is admissible in a revocation proceeding," Beckham v. State, 872 So. 2d 208, 211 (Ala. Crim. App. 2003), and a combination of both hearsay and nonhearsay

evidence may be sufficient to warrant revocation. See, e.g., Askew v. State, 197 So. 3d 547, 548-49 (Ala. Crim. App. 2015). "[W]hen 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." Walker v. State, 294 So. 3d 825, 832 (Ala. Crim. App. 2019).

In Coach v. State, 44 So. 3d 549 (Ala. Crim. App. 2009), and later in Nguyen v. State, 317 So. 3d 1026 (Ala. Crim. App. 2020), this Court faced scenarios nearly identical to the one here. In each of those cases, the probationer was a sex offender whose probation was revoked for violating the terms and conditions of his probation by failing to register a change in address. The State presented evidence at the revocation hearing in each case indicating that a law-enforcement officer had gone to the probationer's registered address; that the probationer was not present at the address at the time; and that a person who was present at the address had told the officer in Coach that the probationer did not live there and in Nguyen that the probationer had not been there for three weeks. In both

cases, we reversed the probation revocations, noting that the nonhearsay observations of the law-enforcement officers that the probationers were not present at the addresses were not sufficient to indicate that the probationers did not live at the addresses and that, therefore, the only evidence indicating that the probationers did not, in fact, live at the registered addresses were the hearsay statements of the persons present at the addresses.

Similarly, here, Det. Williams's nonhearsay observation that Anderson was not present at his registered address was not sufficient to indicate that Anderson did not live at the address. Rather, the only evidence indicating that Anderson did not live at the address, and that he thus had violated ASORCNA by not registering a change in address, was the hearsay statement of Davis. Therefore, the trial court erred in revoking Anderson's probation for violating ASORCNA by failing to register a change of address.[3]

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[3]Because the revocation of Anderson's probation must be reversed on this ground, we need not address the other issue Anderson raises on appeal.

Based on the foregoing, the judgment of the trial court is reversed and this cause remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED.

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