Cite as 2011 Ark. App. 590

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-413

	Opinion Delivered October 5, 2011
KIRK JOHNSON APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [CR-2003-676-2-5]
V.	HONORABLE JODI RAINES DENNIS, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

DAVID M. GLOVER, Judge

In March 2007, Kirk Johnson entered a negotiated plea of guilty to four drug charges and was placed on probation for a total of five years. In September 2007, the State filed a petition to revoke Johnson's probation, alleging that he had failed to report in March, May, June, and July of 2007; that he had not made a payment on his probation service fees and sheriff's fees since being placed on probation; that he had not completed any community-service work; and that he had failed to attend any substance-abuse counseling.

At a hearing held November 10, 2008, Johnson waived his right to a hearing and admitted that he had violated the terms of his probation. The trial court stated that it accepted and believed that Johnson had violated the terms of his probation; however, the trial court then stated that it was giving Johnson until January 12, 2009, to correct "over a

year of not doing what you were supposed to be doing" and that if it did not hear an excellent report on January 12, Johnson "might as well bring [his] toothbrush." Following the November 2008 hearing, Johnson's case was continued on several occasions for various reasons until February 16, 2010, when Johnson again appeared in court. At that time, the trial court took testimony from Brooke Norsworthy, Johnson's probation officer, and Bryan Stewart, a counselor in training at Sobriety Living Center.

Norsworthy testified that she had taken over the case from another probation officer; that Johnson's reporting had been sporadic; and that when he did report, he had tested positive for amphetamines. According to her notes, Johnson was told at the November 10, 2008 hearing that he was continued on probation with "strict-compliance" terms and that any mistakes would cause his probation to be revoked. Norsworthy also recounted that Johnson had failed to complete any of his community service; had been dropped from a substance-abuse program for failure to report for assessment, although he had been ordered to undergo mandatory alcohol/drug treatment; and had not made any payments to the sheriff's office as required by the terms of his probation.

Stewart testified that Johnson was in an inpatient treatment program at Sobriety Living Center; that Johnson had tested positive for methamphetamine two weeks into the program; that he had tried to fake a drug screen by bringing in clean urine; and that he was not in compliance with the program.

After hearing this testimony, the trial court reminded Johnson that when he appeared on November 10, 2008, and admitted that he was in violation of the terms of his probation, it had specifically told him what was required for him to stay out of the

penitentiary, and he had chosen not to do that. The trial court noted that it was glad Johnson had elected to receive help through the rehabilitation center but said it was "too little, too late." The trial court then sentenced him to the Arkansas Department of Correction for ten years.

Johnson's counsel initially filed a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals. In an opinion issued on January 12, 2011, this court remanded the case for rebriefing because counsel failed to address the revocation of Johnson's probation. *Johnson v. State*, 2011 Ark. App. 26. Johnson's counsel has now filed a merit brief, arguing that the trial court erred in revoking Johnson's probation because (1) Johnson did not waive the sixty-day time limitation for conducting the revocation hearing, and (2) because Johnson was not given notice of the grounds on which revocation was sought because the State did not file a new petition for revocation. Neither of these issues were preserved for appellate review; therefore, we affirm.

For his first argument, Johnson does not contest that there is sufficient evidence to support the revocation of his probation. Rather, he argues that he did not waive the sixty-day time limit in which to hold his revocation hearing and that he did not receive adequate notice of the conditions of probation that he violated.

Arkansas Code Annotated section 5-4-310(b)(2) (Repl. 2006)[1] provides that a revocation hearing shall be conducted by the court that placed a defendant on probation

[1]This section was repealed by Act 570 of 2011.

within a reasonable period of time after the defendant's arrest, not to exceed sixty days. In this case, Johnson was served with a bench warrant on June 6, 2008, and he was not brought before the trial court until November 10, 2008. Johnson, citing *Simpson v. State*, 2010 Ark. App. 33, notes that the issue of timeliness of a hearing is waived if not raised at the time of the hearing and admits that this issue was not raised to the trial court at the time of the hearing. He, nevertheless, argues that this court should address his timeliness issue because his waiver was not knowingly and intelligently waived. However, a review of the record belies this argument. The record reflects that on June 25, 2008, while represented by counsel, Johnson voluntarily waived formal arraignment by signing a waiver of arraignment and entry of appearance, which was concurred in by his attorney. Therefore, because the issue of timeliness of the hearing was not raised before the trial court, it is thereby waived.

Johnson's second argument is that he was not given prior notice of the conditions of probation that he was alleged to have violated pursuant to Arkansas Code Annotated section 5-4-310(a)(3) (Repl. 2006).[2] This argument is also not preserved for appellate review; Johnson never made this argument to the trial court. The appellate courts will not address an argument, even a constitutional one, that is raised for the first time on appeal. *Caldwell v. State*, 2011 Ark. App. 358.

Affirmed.

ABRAMSON and MARTIN, JJ., agree.

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[2]This provision has also been repealed by Act 570 of 2011.