Cite as 2011 Ark. App. 670

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR11-49

	Opinion Delivered November 9, 2011
KIRK BYRON STANSELL APPELLANT	APPEAL FROM THE PERRY COUNTY CIRCUIT COURT [No. CR 2008-9]
V.	HONORABLE BARRY SIMS, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED AS MODIFIED

LARRY D. VAUGHT, Chief Judge

Kirk Stansell appeals from the September 29, 2010 judgment and commitment order entered in the Perry County Circuit Court, revoking his probation and sentencing him to ten years' imprisonment. On appeal, Stansell makes due-process arguments and evidentiary objections, claiming that the 2010 judgment and commitment order should be reversed because it was based on violations of a 2009 judgment and commitment order that does not exist. We affirm the trial court's 2010 judgment and commitment order because Stansell's due-process and evidentiary challenges related to the nonexistent 2009 order are not preserved.

On October 6, 2008, Stansell pled guilty to possession of drug paraphernalia with intent to manufacture methamphetamine and possession of drug paraphernalia. He was sentenced to five years' probation. A judgment and commitment order was entered on November 5, 2008.

The State, on March 26, 2009, filed a petition for revocation of probation, alleging that Stansell violated the terms and conditions of his probation by failing to pay fines and costs as

ordered by the court and failing to report to his probation officer as directed. On November 3, 2009, Stansell signed a Conditions of Release of Probation, indicating that he was pleading guilty to the revocation allegations and that his original five-year-probation sentence was reinstated with the added condition that he attend a drug-treatment program. However, no judgment and commitment order was entered reflecting Stansell's guilty plea to this revocation petition.

On December 23, 2009, a second petition for revocation of probation was filed by the State, alleging that Stansell failed to report to his probation officer and failed to enter a drug-treatment program. At a revocation hearing on September 7, 2010, the State presented testimony from Stansell's probation officer that Stansell did not report as required on November 16, 2009, or any time thereafter. The officer also stated that he had no evidence that Stansell entered a drug-treatment program. After the hearing, the trial court revoked Stansell's probation and sentenced him to ten years' imprisonment.[1] A judgment and commitment order was entered September 29, 2010. The order stated in two separate places:

> DEFENDANT ORIGINALLY SENTENCED TO PROBATION on 10/06/2008: PROBATION REVOKED 11/03/2009 and restored to original Probation Sentence: REVOKED again on 09/07/2010.

It is this order from which Stansell appeals.[2]

Stansell contends that the 2010 revocation order should be reversed because it was based

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[1]At the hearing, the trial court did not advise the parties upon which of the two conditions the revocation decision was based.

[2]This is not the first time this case has been presented to our court. In June 2011, Stansell's counsel filed a no-merit appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967). In *Stansell v. State*, 2011 Ark. App. 462, we denied counsel's motion to withdraw and ordered that the record be settled, and if necessary supplemented, based on the absence of a 2009 judgment and commitment order revoking Stansell's probation. In this second appeal, no 2009 judgment and commitment order is included in the record.

on the terms and conditions of a nonexistent November 2009 judgment and commitment order. He argues that he suffered due-process violations and prejudice from references to more than one revocation when there was no prior revocation order entered. However, Stansell's arguments are not preserved because he failed to make them below. Despite conceding this point in his brief, Stansell requests reversal.

It is axiomatic that the appellate court 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, at 7 (citing *Rhodes v. State*, 2011 Ark. 146, at 6 (declining to consider a due-process argument because the argument had not been articulated to the trial court)); *Rogers v. State*, 2011 Ark. App. 2, at 3 (holding that a constitutional due-process argument must be raised before the trial court to preserve the argument for appeal and thus declining to address the merits of appellant's due-process argument on appeal). Further, procedural and evidentiary objections must be made to the trial court in order to preserve the claims for appellate review. *Nelson v. State*, 84 Ark. App. 373, 379–80, 141 S.W.3d 900, 904–05 (2004). Because Stansell has failed to preserve his arguments for review, we do not address them. Accordingly, we affirm.

While affirming, we hold that a modification of the 2010 judgment and commitment order is required. Because there is no 2009 judgment and commitment order, the following language, "PROBATION REVOKED 11/03/2009 and restored to original Probation Sentence," which is included in two sections of the 2010 order, shall be struck.[3]

[3]With the language concerning a 2009 order removed from the 2010 judgment and commitment order, what remains is language referring to the November 5, 2008 judgment and commitment order. It and its accompanying terms and conditions of probation serve as the bases of the trial court's 2010 judgment and commitment order because (1) Stansell was within

Affirmed as modified.

GLADWIN and MARTIN, JJ., agree.

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the 2008 probation period when the State filed its second petition to revoke in 2009 and (2) reporting to the probation officer, which the State's second petition to revoke alleged that Stansell failed to do, was one of the conditions of the 2008 probation.