IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

RYAN SCOTT CONNELL,

Appellant,

v. Case No. 5D19-3700

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed June 4, 2021

Appeal from the Circuit Court for Citrus County,
Richard A. Howard, Judge.

Matthew J. Metz, Public Defender, and Andrew Mich, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, Roberts J. Bradford, Jr. and Kellie A. Nielan, Assistant Attorneys General, Daytona Beach, for Appellee.

EISNAUGLE, J.

Ryan Scott Connell appeals his judgment and sentence after revocation of his probation. Connell's only argument on appeal is that the

trial court violated his due process rights when it terminated his probation without an opportunity to contest the alleged violations of probation.[1] We agree.

In the proceedings below, Connell pled guilty to violating his probation. As part of a negotiated plea, he would remain on probation but agreed to enter mental health court.

While in mental health court, however, Connell had a series of positive THC tests, and was eventually charged with additional violations, including a new law violation and testing positive for codeine. As a result, he was terminated from the program by the mental health court judge but was not given an opportunity to contest any of the new violations at that time.

Thereafter, the parties appeared for a sentencing hearing before a different judge that began with the court announcing "[w]e're here for sentencing aspects." As the hearing proceeded, Connell challenged the court, specifically contending that he had not consumed codeine willfully. However, each time the court sought clarification, the State insisted that sentencing was appropriate based upon Connell's previous guilty plea. The lower court ultimately agreed and concluded that the hearing was "just for

[1] Connell has not raised any argument on appeal based on Florida's mental health court programs statute. *See* § 394.47892(4)(b), Fla. Stat. (2020).

sentencing." After receiving evidence, which included sworn testimony relevant to two violations, the court revoked Connell's probation and imposed sentence.

On appeal, the State now seems to recognize that Connell was entitled to an opportunity to contest the new violations. Nevertheless, the State argues that Connell received adequate due process because it offered competent, substantial evidence of the positive codeine test and one other violation at the sentencing hearing. The State characterizes the hearing as "contested," emphasizes that Connell cross-examined witnesses, and asserts that he could have offered his own evidence.

We write to explain why the sentencing hearing in this case did not satisfy the requirements of procedural due process. *See* Amend. XIV, U.S. Const.

Procedural Due Process

Before a trial court may revoke probation, "[d]ue process requires that the State prove an alleged violation of probation at a hearing or that the defendant enter a knowing admission to a violation before the trial court revokes the defendant's probation." *Woodson v. State*, 9 So. 3d 716, 717 (Fla. 2d DCA 2009) (citation omitted); *see McLean v. State*, 990 So. 2d 1229, 1229 (Fla. 1st DCA 2008); *Lawson v. State*, 941 So. 2d 485, 488 (Fla. 5th

DCA 2006). Importantly, "[t]o satisfy procedural due process, an opportunity to be heard must be meaningful and complete and 'not merely colorable or illusive.'" *Epps v. State*, 941 So. 2d 1206, 1207 (Fla. 4th DCA 2006) (quoting *Rucker v. City of Ocala*, 684 So. 2d 836, 841 (Fla. 1st DCA 1996)); *accord Ryan's Furniture Exch., Inc. v. McNair*, 162 So. 483, 487 (Fla. 1935).

That said, we recently recognized "[d]ue process is a flexible concept and requires only that the proceedings are essentially fair." *Gaither v. State*, 296 So. 3d 553, 555 (Fla. 5th DCA 2020) (citation omitted). "Thus, due process does not lend itself to a single, static test to determine whether its requirements have been met." *Id*. "Instead, courts must consider the individualized facts of each case." *Id*.

The Hearing in this Case

We find the State's defense of the procedure used in this case unpersuasive. First, we can identify nothing in the record to put Connell on notice that he should prepare for both sentencing and to contest the alleged violations of probation on their merits at the hearing.

Second, even if Connell had been prepared, the court made it clear that any evidence or argument intended to contest the violations would not be entertained because the hearing was "just for sentencing." The State's proffer of evidence, and the "contested" nature of the hearing, do not change

our analysis because a sentencing hearing and a violation of probation hearing are not interchangeable. *See Turner v. State*, 261 So. 3d 729, 736–39 (Fla. 2d DCA 2018) (identifying three distinct stages in a violation of probation proceeding and describing their differences); *see also Black v. Romano*, 471 U.S. 606, 611 (1985) ("In identifying the procedural requirements of due process, we have observed that the decision to revoke probation typically involves two distinct components: (1) a retrospective factual question whether the probationer has violated a condition of probation; and (2) a discretionary determination by the sentencing authority whether violation of a condition warrants revocation of probation."). Here, Connell was entitled to an opportunity to tailor his evidence and argument to the issue at hand—whether he committed the new violations in the first place.

We therefore conclude that the hearing in this case did not afford Connell a fair and meaningful opportunity to contest the new violations of probation, and as a result, it did not satisfy his constitutional right to due process.

REVERSED and REMANDED.

COHEN and EDWARDS, JJ., concur.