

1 Zanders, Appellant, v. Anderson, Supt., Appellee.

2 [Cite as *Zanders v. Anderson* (1996), _____ Ohio St. 3d _____.]

3 *Criminal law -- Probation -- Reversed criminal conviction may serve as*
4 *basis for probation revocation unless probationer pleads and*
5 *proves that reversal removes all factual support for the probation*
6 *revocation.*

7 A reversed criminal conviction may serve as the basis for probation
8 revocation unless the probationer pleads and proves that reversal
9 removes all factual support for the probation revocation. (*State ex*
10 *rel. Hickman v. Capots* [1989], 45 Ohio St. 3d 324, 544 N.E. 2d 639;
11 *Flenoy v. Ohio Adult Parole Auth.* [1990], 56 Ohio St. 3d 131, 564
12 N.E. 2d 1060; and *State ex rel. Jackson v. McFaul* [1995], 73 Ohio St.
13 3d 185, 652 N.E. 2d 746, followed. *In re Petition for Mallory* [1985],
14 17 Ohio St. 3d 34, 17 OBR 28, 476 N.E. 2d 1045, overruled to the
15 extent that it is inconsistent with this opinion.)
16 (No. 95-68--Submitted September 26, 1995--Decided January 10,
17 1996.)

18 Appeal from the Court of Appeals for Lorain County, No.
19 94CA005925.

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22 In 1991, appellant, Lawrence Zanders, was convicted of grand theft
23 with a specification, and also of failure to appear, and was sentenced for

1 these crimes to consecutive terms of imprisonment of two to ten and one to
2 five years, respectively. However, the trial court suspended execution of the
3 sentences and placed appellant on probation for two years.

4 On January 26, 1993, appellant was convicted of two felony counts of
5 involuntary manslaughter and failure to drive within marked lanes, a minor
6 misdemeanor. He was found not guilty of two counts of aggravated
7 vehicular homicide, one count of tampering with evidence, one count of
8 failure to stop and exchange information after an accident, and one count of
9 operating a motor vehicle without lighted lights. The jury could not agree
10 on a charge of “failure to operate a vehicle without reasonable control
11 [*sic*],” which the prosecution then dismissed. He was sentenced to
12 consecutive four-to-ten year terms on each conviction of involuntary
13 manslaughter, with each minimum term to be a period of actual
14 incarceration, and was fined one hundred dollars for failure to drive within
15 marked lanes. The conviction for failure to drive within marked lanes
16 served as the underlying misdemeanor for the involuntary manslaughter
17 convictions.

1 On January 29, 1993, the trial court also revoked appellant's
2 probation and imposed sentence on the 1991 convictions.

3 On appeal, the court of appeals reversed the convictions for
4 involuntary manslaughter based on *State v. Collins* (1993), 67 Ohio St. 3d
5 115, 616 N.E. 2d 224, which held that a minor misdemeanor may not serve
6 as the underlying offense for involuntary manslaughter. The court of
7 appeals affirmed the conviction for failure to drive within marked lanes and
8 remanded the case to the trial court to execute its judgment.

9 On June 2, 1994, appellant filed a motion to vacate the probation
10 revocation. The trial court apparently did not act on the motion until
11 January 6, 1995, when it denied the motion, stating that the "underlying
12 misdemeanors [*sic*] are sufficient reasons to revoke probation."

13 In the meantime, on August 5, 1994, appellant filed this petition for
14 habeas corpus in the court of appeals. Both parties filed motions for
15 summary judgment. The court of appeals granted appellee's motion,
16 holding that by virtue of the remaining marked-lanes conviction, the trial
17 court had discretion to determine whether probation should be revoked.

18 Appellant appeals to this court as a matter of right.

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2 *Lawrence Zanders, pro se.*

3 *Betty D. Montgomery, Attorney General, and Charles L. Wille,*

4 Assistant Attorney General, for appellee.

5 *Per Curiam.* We affirm the judgment of the court of appeals.

6 Habeas corpus relief is available to redress a nonjurisdictional claim
7 when there is no adequate remedy at law. As to adequate remedy, both
8 appellant and appellee rely on *In re Petition for Mallory* (1985), 17 Ohio St.
9 3d 34, 17 OBR 28, 476 N.E. 2d 1045. In *Mallory*, the appellee had been
10 convicted of two counts of receiving stolen property, but was placed on five
11 years' probation. During the probation period, he was convicted of carrying
12 a concealed weapon, and his probation was revoked. The concealed
13 weapons violation was reversed on appeal. Then Mallory, like appellant,
14 requested the trial court to vacate the probation revocation. Receiving no
15 decision for several months, Mallory filed for a writ of habeas corpus in the
16 court of appeals. The court of appeals allowed the writ and, apparently,
17 discharged Mallory from custody. The state appealed. We affirmed,
18 holding that when the concealed weapons conviction was overturned, the

1 probation revocation order was based on a nullity and therefore void. 17
2 Ohio St. 3d at 35, 17 OBR at 29, 476 N.E. 2d at 1047. We further reasoned
3 that even though the trial court may have had jurisdiction to consider the
4 motion to vacate the probation revocation, after a reasonable time had
5 elapsed without action by the trial court, habeas corpus would lie. 17 Ohio
6 St. 3d at 36, 17 OBR at 29-30, 476 N.E. 2d at 1047.

7 In *Mallory*, we emphasized the importance of habeas corpus as an
8 effective and speedy remedy. Accordingly, although a motion to vacate
9 may be an adequate remedy if it is acted upon quickly, it was not an
10 adequate remedy in this case.

11 Appellant argues that he was denied due process of law by being
12 sentenced to long terms of imprisonment on the probation violation for
13 committing only a minor misdemeanor. He cites no authority which
14 supports this proposition.

15 In *Collins*, we stated that a minor misdemeanor could not be the
16 predicate for an involuntary manslaughter conviction. However, that
17 decision was based on statutory construction, not due process. The Sixth
18 Circuit Court of Appeals has held that the former involuntary manslaughter

1 statute did not violate the Due Process Clause even though it did not contain
2 a *mens rea*:

3 “*** [W]here a criminal statute prohibits and punishes conduct not
4 innocent or innocuous in itself, the criminal intent element may be
5 dispensed with if the criminal statute is designed for the protection of the
6 public health and safety and if it has no common law background that
7 included a particular criminal intent. Because citizens are presumed to
8 know the ordinary traffic safety laws and that violating them is dangerous
9 and wrong, Ohio’s involuntary manslaughter statute, as applied in this case,
10 is based on the obviously wrongful and blameworthy conduct of violating
11 traffic safety laws. Accordingly, it is not the kind of statute that requires a
12 formally stated criminal intent element in order to comport with the Due
13 Process Clause.” *Stanley v. Turner* (C.A. 6, 1993), 6 F. 3d 399, 404.

14 Applying this reasoning to probation revocation, appellant is
15 presumed to know that violating the marked-lane statute was “dangerous
16 and wrong.” Moreover, since *Mallory* was decided, we have stated in
17 parole cases that “parole may be revoked even though criminal charges
18 based on the same facts are dismissed, the defendant is acquitted, or the

1 conviction is overturned,” unless “all factual support” for the revocation is
2 removed. *State ex rel. Hickman v. Capots* (1989), 45 Ohio St. 3d 324, 544
3 N.E. 2d 639, 640; *Flenoy v. Ohio Adult Parole Auth.* (1990), 56 Ohio St. 3d
4 131, 132, 564 N.E. 2d 1060, 1062; *State ex rel. Jackson v. McFaul* (1995),
5 73 Ohio St. 3d 185, 188, 652 N.E. 2d 746, 749. *Hickman* additionally
6 requires the offender to plead specific facts to show that all factual support
7 has been removed from the revocation. We now apply these cases to
8 probation revocation. Appellant pled no contest to the probation revocation
9 and, in the instant case, has not attempted to plead any specific facts
10 showing why the reversal of his conviction for involuntary manslaughter
11 removed all factual support for the probation revocation.

12 R.C. 2951.02 (C) provides in part that probation “shall be at least on
13 condition that during the period of the probation or other suspension, [the
14 offender] shall abide by the law.” Appellant violated probation by
15 committing a traffic misdemeanor--failing to drive within marked lanes-- a
16 clear violation of “law” that he can be presumed to know was “dangerous
17 and wrong.” *Stanley, supra*. This violation caused the deaths of two
18 people, a fact adjudicated beyond a reasonable doubt. Accordingly, we

1 hold, consistent with *Hickman*, *Flenoy*, and *Jackson*, that a reversed
2 criminal conviction may serve as the basis for probation revocation unless
3 the probationer pleads and proves that reversal removes all factual support
4 for the probation revocation. We also overrule *Mallory* to the extent it
5 holds that the reversal of a conviction on which a probation revocation is
6 based makes that crime a “nullity” for all purposes.

7 For these reasons, the judgment of the court of appeals is affirmed.

8 *Judgment affirmed.*

9 MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY and COOK, JJ.,

10 concur.

11 WRIGHT and PFEIFER, JJ., dissent.

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