

Circuit Court for Wicomico County
Case No. C-22-CR-18-0400

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1411

September Term, 2019

PATRICK ORRIE VETRA

v.

STATE OF MARYLAND

Leahy,
Reed,
Wilner, Alan M.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: September 10, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On October 12, 2018, Patrick Orrie Vetra (“Appellant”) plead guilty in the Circuit Court for Wicomico County to theft under \$1500. He was given a suspended sentence of five years, with three years’ supervised probation. The conditions of probation required that Appellant stay away from the business where the theft occurred, that he pay \$264 in restitution to the business, and complete the Wicomico County Drug Treatment Court Program (“Drug Court”). Appellant did not participate in Drug Court, a precondition of which was participation in a brief inpatient treatment program, nor did he report to his supervising agent, which led to a charge that he violated his probation. On March 28, 2019, a violation hearing was held before Judge Leah Seaton of the Circuit Court for Wicomico County. The court found that Appellant committed the nontechnical violation of absconding, revoked his probation, and imposed a sentence of three years’ incarceration. This timely appeal followed.

In bringing his appeal, Appellant presents one question, which we have rephrased¹:

- I. Did the circuit court err in determining Appellant absconded, a non-technical violation of probation?

For the following reasons, we answer in the affirmative, vacate Appellant’s sentence and remand for resentencing.

FACTUAL & PROCEDURAL BACKGROUND

Appellant was charged with stealing property from a car wash he was employed at

¹ Appellant presents the following question on appeal

1. Did the circuit court err in determining that Appellant absconded, a non-technical violation of probation, where the State failed to prove that he willfully evaded the supervision of his probation agent?

and subsequently entered a guilty plea to theft under \$1500. Per an agreement with the State, Appellant received a suspended sentence of five years with three years' supervised probation. The conditions of Appellant's probation required that he stay away from the business where the theft occurred, that he pay \$264 in restitution to the business, and that he complete the Drug Court program. Additionally, Appellant agreed to standard conditions of probation which included "[r]eport as directed and follow your supervising agent's lawful instructions." The Probation/Supervision Order specified Appellant's "first appointment with the supervising agency [was] upon release." Prior to participating in Drug Court, Appellant needed to complete a short inpatient treatment program.

Following his plea sentencing, Appellant was held in jail until a bed became available at an inpatient treatment program. During that time, Appellant attended a Drug Court hearing where the court was informed of his address and telephone number, which was also listed on the District Court charging document, the Probation Order, and the Notice of Recorded Judgment. Appellant was held in jail until he was released on October 24, 2018 to Hudson Center, an inpatient treatment program that had a bed available. As a result of the wait, Appellant's Drug Court hearing scheduled for October 26, 2018 was postponed to November 30, 2018. Appellant attended the inpatient treatment program at Hudson Center from October 24, 2018 to November 10, 2018 before he was discharged for being non-compliant. Appellant did not report to his probation agent from the time of his discharge to November 29, 2018, prompting the Division of Parole and Probation ("DPP") to file a Statement of Charges and request a warrant for Appellant. Appellant was charged with violating the following conditions of his probation: "report as directed and follow

your supervising agent’s lawful instructions” and “participate in and successfully complete the Drug Court Program.”

At his scheduled Drug Court hearing on November 30, 2018, Appellant went to court but left the building before his hearing after a sheriff’s deputy asked him to leave the courtroom because he was talking to a prisoner. During the violation hearing on March 28, 2019, Appellant’s probation agent, Stephanie Lamonaca, testified to the circumstances of November 30, 2018. Ms. Lamonaca testified that she was notified by Hudson Center of Appellant’s discharge on November 10, 2018. Ms. Lamonaca also testified that Appellant did not contact her from November 10, 2018 to November 30, 2018 and she did not contact him because the department “didn’t have an address or phone number for him.” According to Ms. Lamonaca, at the November 30th Drug Court hearing, Appellant was asked to leave the courtroom because he was speaking to an inmate. Appellant was not sitting in the middle where Drug Court participants sit and instead was seated on the side of the courtroom when he was approached by the bailiff.

However, Ms. Lamonaca testified that Appellant mistakenly believed the bailiff’s instructions to leave the courtroom as being “asked to leave permanently.” Appellant then enrolled in and successfully completed an inpatient drug treatment program at Warwick Manor from December 11, 2018 to January 2, 2019. Ms. Lamonaca testified that when Appellant returned to Drug Court on January 4, 2019, he thought “he was coming to a Drug Court hearing...and that he had done something successfully.” But when Appellant attended court, he was arrested on the warrant issued for violation of probation. When asked if he wanted to address the court during sentencing at the violation hearing, the

following colloquy occurred between Appellant and the court:

[Appellant]: Yes ma'am. I do take full responsibility for not showing up. But I really didn't know like—I was trying everything I could to make it right. You know what I mean? I wasn't trying to abscond or anything like that, but –

[Trial Court]: Why didn't you show up at Ms. Lamonaca's office. [sic] You've been on probation according to my count, one, two, three, four times before.

[Appellant]: I don't have an answer for that.

[Trial Court]: You don't know you have to report to your probation officer. [sic]

[Appellant]: Yes ma'am, I do. But I was going to – I was going to J.D. Collins, too, the whole time. That's who –

[Trial Court]: Really. And had the Drug Court team approved [sic] that as you [sic] your treatment provider?

[Appellant]: Yes ma'am.

[Trial Court]: When?

[Appellant]: I don't know if they approved it, but –

[Trial Court]: No, but you couldn't go to treatment unless you were participating in the Drug Treatment Court and be approved by the Drug Court for it to count.

[Appellant]: The whole time –

[Trial Court]: The idea wasn't that I put you on probation so you could go out and do what you thought was necessary to sort of be adequate for Drug Court. You've argued in front of me, and I let you be out on probation to be in Drug Court.

[Appellant]: Yes ma'am. And that whole time they're saying I wasn't, when I was absconding, I was going to J.D.

Collins, IOP classes. That's who referred me to Warwick. I didn't –

[Trial Court]: What part of you were supposed to be in Drug Court didn't you understand that day of sentencing?

[Appellant]: She told me – Miss Julia told me at J.D. Collins, she was like, you couldn't – I couldn't start going to Drug Court dockets until I've completed the inpatient treatment. So that's why I was going. She made me go to my IOP classes three times a week –

[Trial Court]: Really. And what law school did she go to? And why didn't you report to Ms. Lamonaca during that time?

[Appellant]: I don't have an answer for that.

[Trial Court]: You don't have an answer. Okay. But now you want me just to let you go out on Drug – be in Drug Court even though you have had four prior violation of probation in the State of Delaware. And you've had –lets see one in the State of Maryland. Anymore?

[Ms. Harris]: If I may also note, Your Honor, I was at the staffing when the representative from J. David Collins said that [Appellant] entered and did not tell them he was in Drug Court. They had no idea that he was a Drug Court participant –

[Trial Court]: Oh.

[Ms. Harris]: -- or that he was – there was a warrant out for him.

Ultimately, the court found that because Appellant “signed the paper about Parole and Probation...he should have known to report to his probation agent.” Based on the testimony of Ms. Lamonaca and evidence produced at the violation hearing, the circuit court found Appellant “did willfully fail to report,” which “meets the definition of absconding,” and revoked Appellant’s probation and sentenced him to three years’ incarceration. We shall

include additional facts as they become relevant to our analysis.

STANDARD OF REVIEW

The Court of Appeals has established a probation revocation procedure that typically involves two stages: “(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.” *Hammonds v. State*, 436 Md. 222, 31 (2013) (quoting *Wink v. State*, 317 Md. 330, 332 (1989)). A violation of probation must be proved by the “preponderance of the evidence standard”. *Id.* “We review the courts determination on this first inquiry for clear error.” *Brendoff v. State*, 242 Md. App. 90, 121 (2019) (citing to *State v. Dopkowski*, 325 Md. 671, 677 (1992)). We review the second inquiry, “[w]hether the courts discretion should be exercised to revoke probation,” for an abuse of discretion. *Id.* “[A]buse of discretion will be found only if the trial court has erroneously construed the conditions of probation, has made factual findings that are clearly erroneous, or has acted arbitrarily or capriciously in revoking probation.” *Dopkowski*, 325 Md. at 602.

DISCUSSION

A. Parties’ Contentions

Appellant contends the circuit court employed an incorrect legal standard in determining Appellant absconded or, in the alternative, that evidence presented by the State failed to establish Appellant willfully evaded the supervision of his probation agent. Appellant contends the circuit court’s application of the law was incorrect for two reasons: (1) “the court misconstrued the *mens rea* element of absconding which requires intentional

conduct and not merely negligent, reckless, or even knowing conduct” *Miller v. State*, 249 Md. App. 738, 746 (2021) and (2) “the court misconstrued the *actus reus* element of absconding which requires not merely a failure to report to one’s probation agent but an effort ‘to avoid detection and evade the legal process.’” *Miller*, 249 Md. App. at 746. The State contends that the circuit court applied the correct legal standard after considering Appellant’s argument that he did not willfully evade supervision. Furthermore, the State argues the circuit court made factual findings that Appellant’s conduct amounted to absconding and those findings were not clearly erroneous.

B. Analysis

As a preliminary matter, we hold the circuit court applied the correct legal standard in analyzing whether Appellant willfully evaded supervision from his probation agent to determine if he committed the non-technical probation violation of absconding. We therefore focus our analysis on the factual findings of the circuit court to determine if Appellant willfully evaded supervision from his probation agent, allowing the circuit court to exercise its discretion to revoke his probation and administer a sentence of three years’ incarceration.

I. Justice Reinvestment Act

In an effort to reduce the amount of people entering Maryland’s prison population for minor violations, the General Assembly enacted the Justice Reinvestment Act (“JRA”) in 2016. 2016, Md. Laws, ch. 515. After identifying unnecessarily long sentences for

technical violations of probation as one of the many factors driving mass incarceration², the JRA made comprehensive amendments to the statute governing probation revocations. Primarily, the JRA established distinctions between “technical” and “nontechnical” violations of probation. A technical violation under the JRA is a violation of a condition of probation that does not involve: (1) an arrest or summons issued by a commissioner on a statement of charges filed by a law enforcement officer; (2) a violation of a criminal prohibition other than a minor traffic offense; (3) a violation of a no-contact or stay away order; or (4) absconding. CP §1-101(q) (incorporating the definition of technical violation from Maryland Code, Correctional Services Article (“CS”), §6-101(m)). As defined by the Legislature, absconding is “willfully evading supervision” and “does not include missing a single appointment with a supervising authority.” CS §6-101(b).

If a court finds that a probationer has committed a technical violation of probation, the court may “revoke the probation granted or the suspension of sentence” and impose a sentence of incarceration for: (1) not more than 15 days for a first technical violation; (2) not more than 30 days for a second technical violation; and (3) not more than 45 days for a third technical violation. CP § 6-223(d)(2). These are presumptive limits on the sentences that may be imposed for a technical violation of probation. *Johnson v. State*, 247 Md. App.

² In *Johnson v. State*, 247 Md. App. 170, 183 (2020), we explained that to achieve the JRA’s purpose,

lawmakers relied on the research and recommendations of the Justice Reinvestment Coordinating Council, which was asked to “develop a statewide policy framework of sentencing and corrections policies.” Justice Reinvestment Coordinating Council, Final Report, S.B. 602, 2015 Leg. At 2 (Md. 2015).

170, 184 (2020) (citing *State v. Alexander*, 467 Md. 600, 609 (2020); *Conaway v. State*, 464 Md. 505, 520 (2019); *Brendoff v. State*, 242 Md. App. 90, 111 (2019)). The presumption may be rebutted and a longer sentence imposed if the court finds continued release of the probationer “would create a risk to public safety, a victim, or a witness.” CP §§ 6-223(e)(2), 6-224(c)(2)(ii).

II. Facts Offered by the State to Support Appellant Absconded

In his brief, Appellant recites the following facts proven by the State³ and offered to the circuit court to establish Appellant committed the nontechnical probation violation of absconding:

On October 12, 2018 [Appellant] pled guilty to theft and was sentenced to probation including a condition that he complete Drug Court. The Probation Order states that [Appellant] was to “[r]eport as directed and follow your supervising agent’s lawful instructions” and that his “first appointment” with the Division of Parole and Probation would be “upon [his] release.”

On October 12, 2018 [Appellant] who was still in jail, attended a Drug Court hearing at which the court was advised of his home address and telephone number. The address provided to the court was the same as the one listed already on the District Court charging document, the Probation Order, and the Notice of Recorded Judgment.

On October 24, 2018 [Appellant] was released to Hudson Center, an inpatient drug treatment program where he stayed until his discharge on November 10. On November 29, the Division of Parole and Probation filed a statement of charges alleging that [Appellant] violated his probation.

On November 30, 2018 [Appellant] came to court for a scheduled Drug Court hearing but was told, apparently by mistake, to leave because he was talking with an inmate in the courtroom.

From December 11, 2018 through January 2, 2019, [Appellant] attended an

³ In its brief, the State accepted the Statement of Facts in Appellant’s briefs which were summarized and recited on page 14 of Appellant’s brief.

inpatient drug treatment program at Warwick Manor.

On January 4, 2019 [Appellant] came to court for another Drug Court hearing and was arrested on the violation of probation warrant.

[Appellant] did not report to the Division of Parole and Probation between his discharge from Hudson Center on October 24, 2018 and his arrest on January 4, 2019.

The Division of Parole and Probation did not seek to contact [Appellant] following his release because, according to his agent, “we didn’t have any address or a phone number for him.”

Appellant cites two cases decided by this Court, *Brendoff* and *Miller*, in support of his contention that the State failed to establish from the facts above that he absconded and thus the circuit court’s finding that he absconded was in error.

In *Brendoff*, we considered whether a probationer committed the nontechnical violation of absconding when he failed to complete a court-ordered drug treatment program. 242 Md. App. at 99. *Brendoff* entered a guilty plea to three offenses in three separate cases and while serving his sentences, he filed a motion pursuant to Md. Code, Health-General Article § 8-507, requesting the Circuit Court for Anne Arundel County to commit him to a drug and alcohol treatment facility. *Id.* at 98. The circuit court granted his motion and committed him to the Department of Health to complete a residential drug treatment program. *Id.* But after missing scheduled treatment sessions and leaving the treatment prior to discharge, *Brendoff* was charged with violating his probation and absconding by willfully evading supervision under CS § 6-101. *Id.* at 103. The circuit court revoked his probation and sentenced him to 10 years’ incarceration. *Id.* at 106.

On appeal, we vacated the circuit court’s revocation of probation and remanded for

the circuit court to determine if Brendoff “willfully evaded” supervision from the Division of Parole and Probation, not the Department of Health. We explained “when a prisoner is placed on supervised probation upon admission into a drug and alcohol treatment facility pursuant to an order issued under HG § 8-507, the Division of Parole and Probation (‘DPP’), which includes the assigned probation agent, is the probationer’s ‘supervising authority’ for purposes of ascertaining whether the probationer has absconded within the meaning of CS § 6-101(b).” *Id.* at 99.

In *James Miller v. State of Maryland*, the circuit court found Miller had absconded after violating conditions of his probation that required he pay child support or, if unable to do so, submit proof of his job search on a weekly basis to the Wicomico County Bureau of Support Enforcement. 249 Md. App. 738, 739-40 (2019). On appeal, we held Miller had violated the condition of his probation but the violation itself was not the nontechnical violation of absconding. *Miller*, 249 Md. App. at 749. Analyzing the definition of absconding, we elaborated that to abscond from supervision of a supervising agent, a probationer “must evade the legal process of a court by fleeing, hiding himself, or making some conscious effort to avoid custody or supervision. *Id.* at 748 (quoting *State v. Ford*, 205 Or. App. 506, P3d 959, 961 (2006)). We identified that “there was no requirement that Mr. Miller report regularly to the Bureau as a condition of probation and no allegation that he failed to report. Similarly, there was no evidence that Mr. Miller concealed himself from the supervision of the Bureau or that the Bureau was unable to locate him or ascertain his level of compliance with his obligations.” *Id.* at 749. Although Miller’s failure to abide by the conditions of his probation was a “seemingly egregious violation” it did not constitute

willful evasion of supervision and accordingly, this Court vacated the judgment of the circuit court in that case. *Id.* at 748-49.

Turning our attention to the current case, Appellant contends that the facts presented by the State and accepted by the circuit court fall short of willful evasion of supervision. We agree. Appellant received the very broad but standard condition to report to his supervising agent and follow all lawful instructions from said agent. Similar to the facts in *Miller*, Appellant was not instructed to check in with his probation agent periodically or with any frequency beyond the “first appointment” scheduled upon his release. The language of the Probation Order suggests Appellant had one initial appointment with DPP, which he missed. As outlined under the statute, absconding is “willfully evading supervision” and “does not include missing a single appointment with a supervising authority.” CS §6-101(b).

There was also no evidence that Appellant attempted to conceal himself or that DPP was unable to ascertain his whereabouts. At the violation hearing, Appellant’s probation agent, Ms. Lamonaca, testified she had no way to contact him and that she had only seen him once from the time he was discharged to the time he was arrested for violating probation. Despite Ms. Lamonaca’s statements, DPP clearly had access to Appellant’s address and contact information. Appellant’s address and telephone number were listed on the District Court charging document, the Probation Order, and the Notice of Recorded Judgment. It is also likely documents related to Drug Court contained this contact information as well. Once he was discharged on November 10, 2018, Hudson Center notified Ms. Lamonaca and provided her with a discharge note that contained information

for Appellant, although it is unclear what that contact information was.

However, no attempts were made by Ms. Lamonaca or DPP to contact Appellant after his discharge from Hudson Center. One day after filing a statement of charges for violation of probation, Ms. Lamonaca testified that she saw Appellant in court on November 30, 2018 but did not testify about speaking to him, mentioning the warrant, or making any attempt to communicate with him. From the evidence presented, the DPP could account for Appellant's whereabouts from the time he was sentenced to his arrest for violating the conditions of probation, with the exception of the 20 days between his discharge from Hudson Center to his appearance in court on November 30, 2018. But the State failed to produce any evidence that suggests Appellant attempted to conceal his location or evade supervision within that 20-day period. While we agree that failure to report to DPP upon his release from Hudson Center constituted a violation of his probation, the record does not support the finding that the failure to report constituted willful evasion by the supervising authority. For all these reasons, we hold the circuit court erred in finding Appellant's conduct amounted to willful evasion of supervision and vacate his sentencing.

CONCLUSION

Accordingly, we vacate Appellant's sentencing and remand to the Circuit Court for Wicomico County to conduct proceedings consistent with this opinion and to administer the appropriate sanction under the guidelines of the JRA.

**SENTENCE VACATED. CASE
REMANDED TO THE CIRCUIT COURT
FOR WICOMICO COUNTY FOR**

**RESENTENCING. COSTS TO BE PAID BY
WICOMICO COUNTY.**