Circuit Court for Baltimore County
Case No. K14-1326

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2069

September Term, 2017

STATE OF MARYLAND

v.

AARON TERRELL ALEXANDER

Meredith,
Arthur,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: November 20, 2018

*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 December 15, 2017, the Circuit Court for Baltimore County dismissed the State's petition to revoke appellee Aaron Alexander's probation, thereby effectively terminating his term of probation. The State timely appealed, and presents two issues for our review:

1. Can the State appeal the improper dismissal of a properly charged probation violation?
2. Did the circuit court err when it dismissed the State's probation revocation case without adjudicating the charged violation?

We hold that the State may directly appeal the dismissal of its petition, but that the circuit court did not err. Accordingly, we affirm.

FACTS AND PROCEEDINGS

On May 28, 2014, in the Circuit Court for Baltimore County, appellee pleaded guilty to theft between $10,000 and $100,000. The court sentenced appellee to two years' imprisonment, all suspended, and three years of probation. Additionally, the court ordered appellee to pay $11,520.00 in restitution.

On October 20, 2015, the State charged appellee with violating the terms of his probation by failing to pay restitution. Following a hearing on February 11, 2016, the court found appellee in violation of probation and, in an amended probation order, ordered that he pay a minimum of $100 per month in restitution.

On September 21, 2017, the State again charged appellee with violating his probation by failing to pay restitution. At the December 15, 2017 hearing on appellee's new violation of probation, the following ensued:

[THE STATE]: We have Aaron Alexander, K-14-1326. He is present in the courtroom. . . . The agent is present, Your Honor, but this is going to be an admission. The State is going to concede that they are technical violations and he has been in since--

[DEFENSE COUNSEL]: I'm sorry, since November 19th of 2017.

THE COURT: Incarcerated only in this case, [defense counsel]?

[DEFENSE COUNSEL]: I'm sorry, I missed the question.

THE COURT: Is he incarcerated only in this case?

[DEFENSE COUNSEL]: That's my understanding, Your Honor.

THE COURT: All right. For the State, is there any reason to proceed at all as opposed to dismissing the violation of probation? I mean, you know, a technical violation. The . . . maximum sentence is 15 days.

[THE STATE]: Only because it would affect his -- the guidelines in a subsequent case if he was found in violation.

THE COURT: Dismissed. The violation of probation is dismissed. He's released.

[DEFENSE COUNSEL]: Thank you, Your Honor. May I be excused?

THE COURT: Yes, ma'am.

[THE STATE]: Your Honor, will you refer all the matters to CCU[1]? There was a pretty large amount of restitution unpaid.

---

[1] Central Collection Unit

THE COURT:	Yeah. I'm sorry, and of K-14-001326, State of Maryland versus Aaron Alexander, petition for revocation of probation is dismissed. All uncollected fines, fees, costs, restitution referred to the central collection unit. All right. And his probation otherwise had expired so it is over. All right.

Following the court's dismissal of its petition for revocation of probation, the State timely appealed. On March 5, 2018, we issued a Show Cause Order in which we instructed the State to show cause why its appeal should not be dismissed as not allowed by law. Following the State's Answer to Show Cause Order, we issued an Order on May 9, 2018, finding that the order to show cause was satisfied. We instructed the State to brief, among other issues, whether it may seek review of the dismissal of a petition for revocation of probation by way of direct appeal.

DISCUSSION

I. APPEALABILITY

We first address whether the State may directly appeal from a circuit court's dismissal of a petition for revocation of probation. As we will show, the State may directly appeal such an action because probation is a civil proceeding. Additionally, the plain language of Md. Code (1973, 2013 Repl. Vol., 2018 Supp.) § 12-302(g) of the Courts and Judicial Proceeding Article ("CJP") does not apply in this case to restrict the State's right to appeal.

A. Appeals Generally and Probation as a Civil Proceeding

"In Maryland, the right to appeal exists entirely by statute." *State v. Rice*, 447 Md. 594, 616 (2016) (citing *State v. Manck*, 385 Md. 581, 596-97 (2005)). CJP § 12-301 provides the basis for the general right to appeal from a final judgment. That section provides:

> Except as provided in § 12-302 of this subtitle, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law. In a criminal case, the defendant may appeal even though imposition or execution of sentence has been suspended. In a civil case, a plaintiff who has accepted a remittitur may cross-appeal from the final judgment.

As mentioned in CJP § 12-301, CJP § 12-302 restricts a party's general ability to appeal. Notably, "[t]he State's right to appeal *in criminal cases* [is] based entirely on statute[, and,] [u]nless the issue presented may be properly categorized as one of the actions enumerated in [CJP § 12-302(c)], the State has no power to seek appellate review." *State v. WBAL-TV*, 187 Md. App. 135, 146 (2009) (emphasis added) (quoting *Manck*, 385 Md. at 597-98). In other words, if probation were considered a criminal proceeding, § 12-302(c) would control whether the State could appeal.

CJP § 12-302(c) does not control whether the State may appeal here, however, because "[i]n Maryland, the revocation of probation is considered to be a civil proceeding." *Chase v. State*, 309 Md. 224, 238 (1987) (footnote omitted); *see also Hammonds v. State*, 436 Md. 22, 36 (2013) (stating: "[i]t is firmly established that a revocation of probation hearing is a civil proceeding" (quoting *Gibson v. State*, 328 Md. 687, 690 (1992)). In

Chase, the Court of Appeals explained why a revocation of probation, though related to a criminal case, is a civil proceeding:

> While a probation revocation proceeding relates directly to the criminal case of the substantive offense, the proceeding is not itself a new criminal prosecution; the commission of a crime is not charged and the alleged violation of probation, if established, is not punishable beyond the reimposition of the original sentence imposed.

309 Md. at 238 (quoting *Howlett v. State*, 295 Md. 419, 424 (1983)). The Court clarified:

> it is luminously clear that Maryland, like the Supreme Court, deems that a revocation of probation proceeding is not a stage of a criminal prosecution. *It is firmly established as a civil action, and, as we have noticed above, the probationer is not cloaked with the full panoply of constitutional rights and procedural safeguards enjoyed by a defendant in a criminal cause*[.]

Id. at 238-39 (emphasis added) (footnote omitted) (citing *Howlett*, 295 Md. at 424). Because the State "has the same right under [CJP] § 12-301 as other parties to appeal in a civil proceeding[,]" *WBAL-TV*, 187 Md. App. at 146, we must determine whether another section of CJP § 12-302 limits the State's right to appeal a revocation of probation decision. Accordingly, we turn our attention to CJP § 12-302(g), which expressly addresses the ability to appeal from a revocation of probation.

B. CJP § 12-302(g) Does Not Apply to the Dismissal of a Petition for Revocation

CJP § 12-302(g) addresses the right to appeal from an *order revoking probation*. That section provides: "Section 12-301 of this subtitle does not permit an appeal from an order of a circuit court revoking probation. Review of an order of a circuit court revoking probation shall be sought by application for leave to appeal."

The parties here disagree in their interpretations of CJP § 12-302(g). Whereas the State merely states in a footnote in its brief that CJP § 12-302(g) "is not the basis for the State's appeal in this case[,]" appellee argues that the legislative scheme of CJP § 12-302 indicates that, under CJP § 12-302(g), the State may not directly appeal from any revocation of probation proceeding. The issue, then, is whether CJP § 12-302(g) applies in this case, and if so, whether it restricts the State's right to appeal. To resolve this issue, we must interpret the meaning of CJP § 12-302(g).

The Court of Appeals recently reiterated that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the [L]egislature." *SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 639-40 (2018) (quoting *Blake v. State*, 395 Md. 213, 224 (2006)). In reviewing the Legislature's intent,

> We begin our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. If the language of the statute is clear and unambiguous, we need not look beyond the statute's provisions and our analysis ends. Occasionally we see fit to examine extrinsic sources of legislative intent merely as a check of our reading of a statute's plain language. In such instances, we may find useful the context of a statute, the overall statutory scheme, and archival legislative history of relevant enactments.

Id. at 640 (quoting *Douglas v. State*, 423 Md. 156, 178 (2011)). Furthermore, "when construing statutes granting the right to appeal, we must do so narrowly." *Griffin v. Lindsey*, 444 Md. 278, 287 (2015) (citing *Rush v. State*, 403 Md. 68, 98 (2008)).

CJP § 12-302(g) provides: "Section 12-301 of this subtitle does not permit an appeal from an order of a circuit court revoking probation. Review of an order of a circuit court

revoking probation shall be sought by application for leave to appeal." The plain language indicates that in the circumstance where a court *revokes probation*, review may only be sought by filing an application for leave to appeal.

Appellee construes the plain language of CJP § 12-302(g) as providing the only avenue of appeal from a probation proceeding. He contends: "it is clear that the absence of specific language allowing any other appeals from probation-revocation proceedings means that those other appeals are not permitted." Appellee further argues: "By removing probation-revocation appeals from the scope of section 12-301, and excluding by omission any right for the State to appeal from an order dismissing a petition in section 12-302(g), the Legislature has communicated its intent to allow appeals, by application, only from orders revoking probation."

The plain language of CJP § 12-302(g) unambiguously provides that when a party seeks to appeal from an *order revoking probation*, that party must file an application for leave to appeal. The statute does not contain broad language limiting the scope of all appeals arising out of probation revocation proceedings, as appellee argues, and we do not construe it as doing so. Instead, we must construe CJP § 12-302(g) narrowly. *Id*. at 287. CJP § 12-302(g) does not limit the State's right to appeal from the dismissal of its petition; the State is not appealing an order in which probation was revoked. Accordingly, we conclude that the State may directly appeal from the trial court's decision to dismiss its petition.

II. Dismissal of Petition for Revocation of Probation

Having established that the State may appeal in this case, we now turn to whether the court erred in dismissing the petition. In order to review whether the court committed error in its dismissal, we must consider what took place at the hearing. The trial court effectively terminated appellee's probation when it dismissed the State's petition and referred all unpaid restitution to the Central Collection Unit. By referring the unpaid restitution to the Central Collection Unit and concluding that appellee's probation was "over," the court clearly expressed its intent to end the probation. Against this backdrop, we review whether the court erred in dismissing the petition and effectively ending appellee's probation.

Both the Maryland Code and the Maryland Rules permit a trial court to end or terminate probation. Md. Code (2001, 2018 Repl. Vol.) § 6-223(a) of the Criminal Procedure Article ("CP") provides: "A circuit court or the District Court may end the period of probation *at any time*." (Emphasis added). Similarly, Maryland Rule 4-346(b) provides a trial court with plenary power over its probation orders, including the power to "change its duration":

> During the period of probation, on motion of the defendant or of any person charged with supervising the defendant while on probation or on its own initiative, the court, after giving the defendant an opportunity to be heard, may modify, clarify, or terminate any condition of probation, change its duration, or impose additional conditions.

In its brief, the State contends that the court erred because it "refused to hold a hearing on the charged violation." The State construes CP § 6-223(a) as "promulgating

that [the] District Court and [the] circuit court have power to end probation *after holding a hearing*." (Emphasis added). We expressly disavow the State's interpretation of § 6-223(a) because that section does not contain any mention of a hearing.[2] Furthermore, although Maryland Rule 4-347(e) states that "[t]he court shall hold a hearing to determine whether a violation has occurred," this hearing requirement does not apply where the court simply dismisses the petition or terminates probation without determining whether a violation has occurred. Having established that the court was not required to hold a hearing, we turn to whether the court erred in dismissing the State's petition and terminating appellee's probation.

The applicable standard of review for these proceedings is an abuse of discretion. Our Court has stated: "Even when conditions of probation have been violated 'the question whether to revoke probation is a matter within the discretion of the trial court.' Indeed, under some circumstances, a technical violation may be so trivial that revocation of probation is itself an abuse of discretion." *Christian v. State*, 62 Md. App. 296, 309 (1985)

[2] Although Maryland permits a court to end probation at any time pursuant to CP § 6-223(a), some states impose limits on a court's ability to end probation. *See, e.g.,* Ala. Code § 15-22-54 (2015) (stating that the court may, upon recommendation of the officer supervising probation, terminate probation, and that after conducting a hearing violation, the court may revoke probation); Ariz. Rev. Stat. Ann. § 13-901 (2010) (stating: "The court, on its own initiative or on application of the probationer, after notice and an opportunity to be heard for the prosecuting attorney and, on request, the victim, may terminate the period of probation"); La. Code Crim. Proc. Ann. art. 897 (2014) (stating that the court may terminate a defendant's probation after the expiration of one year when either the State has provided written verification that it does not oppose termination, or following a contested hearing).

(internal citation omitted). The Court of Appeals has stated that, typically, "[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." *State v. Dopkowski*, 325 Md. 671, 678 (1992) (quoting *Herold v. State*, 52 Md. App. 295, 303 (1982)). Furthermore, "[t]he court's discretion must guide it as it chooses among the options, looking at both society's interests and those of the offender." *Id*. at 678-79 (quoting *Maus v. State*, 311 Md. 85, 107 (1987)).

Here, we discern no abuse of discretion in the trial court's dismissal of the State's petition and in its decision to terminate probation. In reaching its decision, the court learned that appellee's violation was technical in nature, and that its only potential import would be to enhance his sentencing guidelines in a subsequent case. Because of the minimal punishments appellee would have faced if his probation had been revoked, and in light of the great deference afforded trial courts in probation proceedings, we cannot conclude that the court abused its discretion. Accordingly, we affirm the court's decision to terminate appellee's probation by dismissing the petition for probation revocation.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY BALTIMORE COUNTY.