

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2006-543 & 2006-544

AUGUST TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windham Circuit
Anthony Perkins	}	
	}	DOCKET NOS. 1915-12-01 WmCr &
		5-1-02 WmCr
		Trial Judge: Katherine A. Hayes

In the above-entitled cause, the Clerk will enter:

Defendant Anthony Perkins appeals from the trial court's order revoking his probation and ordering him to serve eighteen months to four years. He argues that: (1) the evidence does not support the court's finding that he violated probation by failing to report to his probation officer "in the manner and at such time and place as he or she may require"; and (2) the court lacked a basis for revoking probation and imposing imprisonment. We affirm.

In March 2002, defendant pled guilty to aiding in the commission of a felony, simple assault, and grand larceny. He was sentenced to one-to-three years, all suspended except two months to serve, for the first two crimes, and one-to-three years, all suspended except two months to serve, for the third crime. The two sentences ran consecutively. It appears that defendant was released from the Vermont facility in May 2002, whereupon he began serving a short sentence in New Hampshire. Upon his release from the New Hampshire jail, he committed and was convicted of new crimes. In January 2006, the State filed a probation-violation complaint, alleging in relevant part that defendant had violated the following conditions of probation: "you shall not be convicted of another offense; and you shall report to your probation officer in the manner and at such time and place as he or she may require."

A merits hearing was held in November 2006. The State presented evidence showing that defendant had been convicted of felony burglary and misdemeanor resisting arrest in New Hampshire after his release from prison. Defendant's probation officer also testified that she had attempted to contact defendant, and had relayed a message to him through his girlfriend that he needed to check in with probation. Defendant left several messages for the probation officer but he failed to provide any contact information that would allow the probation officer to contact him directly. The State also introduced a June 2004 letter that defendant had written to the court. In the letter, defendant acknowledged that he had violated his agreement with the State by committing a new crime and by failing to contact his probation officer when he was released from jail. The court found that the evidence unequivocally established that defendant violated the two conditions of probation set forth above. It revoked defendant's probation, and sentenced him to serve an overall term of eighteen months to four years, to run concurrently with the sentence he was serving in New Hampshire. Defendant appealed.

Defendant first argues that the court erred in finding that he violated probation by failing to report to his probation officer. He asserts that there was no evidence that any probation officer ever instructed him as to the manner, time, or place of required reporting. Defendant also maintains that the court lacked a basis for revoking

his probation and ordering him imprisoned. According to defendant, none of the grounds set forth in 28 V.S.A. § 303(b) are satisfied.

These arguments are without merit. Defendant was plainly aware of his obligation to check in with the Vermont probation office. He was specifically informed of this obligation by his probation officer. He also acknowledged this obligation in his June 2004 letter to the court, and admitted that his conduct violated his agreement with the State. See State v. Hammond, 172 Vt. 601, 602 (2001) (mem.) (explaining that a defendant is entitled to know what conduct is forbidden before the initiation of a probation-revocation proceeding, and noting that a defendant may be put on notice as to what may constitute a probation violation merely by the instructions and directions of a probation officer). In light of the evidence, we find no error in the court's conclusion that defendant violated probation by failing to report to his probation officer. See State v. Gleason, 154 Vt. 205, 216 (1990) (Supreme Court will uphold the trial court's factual findings if they are fairly and reasonably supported by any credible evidence; the court's legal conclusion will stand if it is reasonably supported by its findings). We note, moreover, that it is undisputed that defendant also violated probation by committing new crimes.

Defendant's second claim of error is equally without merit. The trial court may revoke probation and order confinement when a probationer violates a condition of probation or is convicted of another crime, and:

- (1) Confinement is necessary to protect the community from further criminal activity by the probationer;
- (2) The probationer is in need of correctional treatment which can most effectively be provided if he is confined; or
- (3) It would unduly depreciate the seriousness of the violation if probation were not revoked.

28 V.S.A. § 303. As defendant recognizes, the trial court need not "specifically identify which of the alternatives set forth in § 303(b) it has employed so long as at least one readily supports the court's conclusion." State v. Millard, 149 Vt. 384, 387 (1988). In this case, the evidence amply supports a conclusion that imprisonment is warranted under either § 303(b)(1) or (3). The record shows that shortly after defendant was released from jail, he committed new crimes, both of which were similar to the crimes for which he was on probation. Given defendant's behavior, the trial court's decision to revoke probation and impose incarceration was well-founded.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice