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ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-14-873

DYLAN MASSEY APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** APRIL 15, 2015 APPEAL FROM THE ARKANSAS COUNTY CIRCUIT COURT, SOUTHERN DISTRICT [NO. CR-10-72] HONORABLE DAVID G. HENRY, JUDGE AFFIRMED

DAVID M. GLOVER, Judge

Dylan Massey pled guilty to the underlying felony offenses of theft of a firearm and breaking or entering. As part of his sentence he was placed on supervised probation for a period of forty-eight months, agreeing to abide by designated terms and conditions. The State had filed earlier petitions to revoke, but the one that led to his actual revocation was filed on May 20, 2014. The revocation hearing was held on June 18, 2014. At the conclusion of the hearing, the trial court revoked his probation, finding that Massey had violated his terms and conditions by possessing drug paraphernalia and a firearm, failing to report as required, failing to complete his GED, and failing to complete a program at the regional correction facility. The sentencing order was entered on June 25, 2014; it imposed a sentence of 120 months on the theft-of-firearm offense and twenty-four months on the breaking-or-entering offense. On June 27, 2014, the circuit court entered an order revoking Massey's probation and explaining the costs for which he was responsible, but also

inexplicably and incorrectly stating that "the parties further announced to the Court that a resolution of the issues involved had been reached and the Court being well and sufficiently advised as to matters of both fact and law, finds that this resolution is in all respects fair and equitable . . . ." On July 15, 2014, Massey filed his initial notice of appeal from the "Judgment entered by the Court on the 23rd day of June, 2014 and filed with the Office of the Circuit Clerk on June 25, 2014." On October 3, 2014, an amended sentencing order was filed. On October 8, 2014, Massey filed an amended notice of appeal, noting the October 3, 2014 amended sentencing order and stating that he was pursuing an appeal "from the sentences imposed by the Circuit Court of Arkansas County." No mention of the June 27, 2014 order containing the incorrect notation of a fair and equitable resolution by the parties was made in either notice of appeal.

Massey contends in this appeal that we should reverse the revocation of his probation because the trial court did not explain in writing its reasons for revoking his probation or the evidence it relied upon in doing so. We affirm.

Arkansas Code Annotated section 16-93-307 provides in pertinent part:

> (b)(1) A suspension or probation shall not be revoked except after a revocation hearing.
>
> . . . .
>
> (5) *If suspension or probation is revoked, the court shall prepare and furnish to the defendant a written statement of the evidence relied on and the reasons for revoking suspension or probation.*

(Emphasis added.) Massey urges us to reverse the trial court's revocation of his probation for failure to include the required written explanation. We decline to do so.

Massey acknowledges that he did not raise this issue below, contending that he did not

have to do so. He relies upon a statement set forth in *Olson v. Olson*, 2014 Ark. 537, 453 S.W.3d 128, that if a party has no notice or opportunity to object to a circuit court's ruling, a posttrial motion is not necessary to preserve the point for appellate review. He argues that he first knew of the trial court's failure to provide the required written statement when the order was entered and that the issue is therefore preserved for appeal under the exception stated in *Olson*. That is, he contends that he had no opportunity to object to the content of the revocation order before it was entered, and therefore his statutory argument is sufficiently preserved for appeal. While Massey recognizes that in *Love v. State*, 2012 Ark. App. 600, our court held that a party who does not raise this issue below waives it, he contends that this court should overrule *Love* because it imposes a preservation rule that is more stringent than the supreme court's rule in *Olson*. We disagree.

In *Love*, our court held as follows:

> Love does not argue that the evidence was insufficient to support his revocation. Rather, he argues that his revocation should be reversed because the court committed reversible error by not providing a reason for revoking his SIS. Arkansas Code Annotated section 16-93-307(b)(5) states that if suspension or probation is revoked, the court shall prepare and furnish to the defendant a written statement of the evidence relied on and the reason for revoking suspension or probation.
>
> The State contends that the issue is not preserved for our review because Love failed to raise this argument to the circuit court. We agree. Love made no objection to the court's omission, precluding our consideration of the issue.

2012 Ark. App. 600 at 4. Moreover, the State cites at least two other cases in addition to *Love*, *supra*, as supporting the need to preserve this argument below—*Brandon v. State*, 300 Ark. 32, 776 S.W.2d 345 (1989); *Dooly v. State*, 2010 Ark. App. 591, 377 S.W.3d 471.

In responding to the State's reliance upon *Brandon*, *Dooly*, and *Love*, Massey contends

Olson, *supra*, was decided *after* those cases and employed a less restrictive preservation standard, i.e., the "no opportunity to object" standard. The problem with his argument is that the *Olson* case did not make new law in this regard. The exception Massey relies upon is one of four, commonly referred to as the *Wicks* exceptions;[1] *see, e.g.*, *Brown v. State*, 2015 Ark. 16, at 5, 454 S.W.3d 226, 230 (emphasis added)(citations omitted):

> The four *Wicks* exceptions are (1) when the trial court fails to bring to the jury's attention a matter essential to its consideration of the death penalty itself; *(2) when defense counsel has no knowledge of the error and hence no opportunity to object*; (3) when the error is so flagrant and so highly prejudicial in character as to make it the duty of the court on its own motion to have instructed the jury correctly; and (4) Ark. R. Evid. 103(d) provides that the appellate court is not precluded from taking notice of errors affecting substantial rights, although they were not brought to the attention of the trial court.

Accordingly, the fact that the *Brandon*, *Dooly*, and *Love* cases, were decided before *Olson*, does not convince us in any way that we must overrule *Love* or *Dooly*, and we cannot overrule *Brandon*, which was decided by our supreme court. The exception itself was in place long before these three cited cases were decided. In line with these precedents; we hold that the issue was not preserved, therefore, we do not address it.

Affirmed.

KINARD and HIXSON, JJ., agree.

Brett D. Watson, Attorney at Law, PLLC, by: *Brett D. Watson*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Laura Kehler Shue*, Ass't Att'y Gen., for appellee.

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[1] *Wicks v. State*, 270 Ark. 781, 606 S.W.2d 366 (1980).