

Cite as 2023 Ark. App. 78
ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-22-391

DOTTIE TRUDO

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 15, 2023

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. 17CR-20-118]

HONORABLE MICHAEL MEDLOCK,
JUDGE

REVERSED AND DISMISSED

KENNETH S. HIXSON, Judge

This is a probation-revocation case. Appellant Dottie Trudo pleaded guilty to possession of methamphetamine with purpose to deliver, maintaining a premises for drug sales, and two counts of possession of drug paraphernalia. On November 30, 2020, a sentencing order was entered placing Trudo on six years' probation for each of these offenses. On April 29, 2021, the State filed a petition to revoke Trudo's probation, alleging that on April 26, 2021, Trudo had violated the conditions of her probation by committing the new offenses of possession of methamphetamine with purpose to deliver, possession of marijuana, and possession of drug paraphernalia. After a revocation hearing held on April 14, 2022, the trial court found that Trudo violated the conditions of her probation. On

April 25, 2022, the trial court entered a sentencing order revoking Trudo's probation and sentencing her to twenty years in prison.

Trudo now appeals from the revocation of her probation. On appeal, Trudo argues that the trial court erred in revoking her probation because there was a lack of proof that she had received written conditions of her probation containing the condition that she lead a law-abiding life. We agree, and we reverse and dismiss.

At the outset of the revocation hearing, Trudo moved to dismiss the petition to revoke, arguing that she did not receive written conditions of the probation that required her to live a law-abiding life as a condition of the probation. The trial court denied Trudo's motion and proceeded with the revocation hearing.

Officer Kevin Dugan was the only witness to testify. Officer Dugan stated that on the night of April 26, 2021, he responded to a report that two individuals were seen going through mailboxes. Upon investigation, Officer Dugan discovered that one of the suspects was Trudo. Trudo was wearing a backpack and had dilated eyes, slurred speech, and lethargic movements. According to Officer Dugan, Trudo gave him consent to search her backpack. Upon searching Trudo's backpack, Officer Dugan found a baggie containing a crystal-like substance that appeared to be methamphetamine, a glass pipe with suspected methamphetamine residue, baggies containing marijuana, and several other baggies. A crime-lab report was admitted into evidence that showed that the crystal-like substance seized from Trudo's backpack was 3.5 grams of methamphetamine.

After the State rested, Trudo renewed her motion to dismiss based on her argument that she had not received in writing the conditions that she was alleged to have violated. The trial court again denied Trudo's motion, found that she had violated the conditions of her probation, and revoked her probation. On appeal, Trudo argues that the revocation petition should have been dismissed because there was no proof that she received written conditions requiring her to lead a law-abiding life.

Arkansas Code Annotated section 5-4-303(a) (Supp. 2021) provides that if a court suspends imposition of sentence on a defendant or places him or her on probation, the court shall attach such conditions as are reasonably necessary to assist the defendant in leading a law-abiding life. Further, Arkansas Code Annotated section 5-4-303(e)(2) provides that the court *shall give the defendant a written statement explicitly setting forth the conditions under which he or she is being released*. All conditions for a suspended sentence or probation, including any requirement of good behavior, must be in writing if the suspended sentence or probation is to be revocable. *Wade v. State*, 64 Ark. App. 108, 983 S.W.2d 147 (1998). The reason for the statutory requirement to give a defendant conditions in writing is to avoid any misunderstanding, and this comports with due process. *Ball v. State*, 2021 Ark. App. 209, 624 S.W.3d 111. Courts have no power to imply and subsequently revoke conditions that were not expressly communicated in writing to a defendant as a condition of the suspended sentence or probation. *Blankenship v. State*, 2014 Ark. App. 104.

However, there is no corollary requirement that the defendant sign a written acknowledgement when he or she receives the written statement or that one be introduced

at a revocation hearing. *Johnson v. State*, 2014 Ark. App. 606, 447 S.W.3d 143. Whether there is proof that a probationer received written conditions of probation is a procedural matter and not one of the sufficiency of the evidence. *Costes v. State*, 103 Ark. App. 171, 287 S.W.3d 639 (2008).

Here, Trudo preserved the issue by objecting below to the absence of proof that she had received written conditions requiring her to lead a law-abiding life. Trudo argues on appeal that, although she signed an “Order of Probation” on November 16, 2020, which required her to pay certain fines and costs as conditions of her probation, the order of probation failed to apprise her of any requirement that she lead a law-abiding life. Trudo is correct. The order of probation signed by Trudo does not contain any such written condition, nor was there any other proof that Trudo had received this condition in writing. Accordingly, the trial court was without power to revoke Trudo’s probation because the revocation was based on the violation of a condition that was not expressly given to her in writing.

The State acknowledges that Trudo never signed any document containing the written condition that she live a law-abiding life. The State, nonetheless, contends that the sentencing order entered on November 30, 2020, supplied sufficient notice of this condition such as to uphold the revocation of Trudo’s probation. We disagree.

The November 30, 2020, sentencing order, which was entered two weeks after Trudo signed the order of probation, provided that Trudo was to serve six years’ probation for the four underlying drug offenses. The last page of the sentencing order contains the statement

“conditions of disposition or probation are attached,” but next to this statement, the “No” box is checked. Nevertheless, attached to the sentencing order is a document titled “Additional Terms/Conditions of Disposition,” wherein the box is checked for “Suspended time conditioned on good behavior.” However, although the sentencing order was signed by the trial court, it was not signed or acknowledged by Trudo.

In arguing that the November 30, 2020, sentencing order was sufficient to apprise Trudo of the condition that she be of “good behavior,” the State relies on *Valencia v. State*, 2016 Ark. App. 176. However, that case is distinguishable.

In *Valencia*, Valencia’s suspended sentence was revoked because she failed to pay restitution. At the revocation hearing, Valencia’s counsel *acknowledged that Valencia was on notice* that she was required to pay restitution but argued that Arkansas law required that she be served with the conditions of the suspension, which were missing from the clerk’s file. The trial court disagreed, and under the specific circumstances presented, this court affirmed the revocation based on the sentencing order that required Valencia to pay restitution as a condition of her suspension. We wrote:

Appellant argues that the trial court erred in revoking her suspended sentence because there is nothing in the record to demonstrate that she was “served” with the terms and conditions of her suspended sentence. Arkansas Supreme Court Administrative Order Number 8 explains that the office of the prosecuting attorney is responsible for completing and submitting the sentencing order to the circuit judge for signature, which is filed in the office of the circuit clerk. The clerk is then responsible for forwarding a copy of the sentencing order to the counsel of record for the defendant. At the revocation hearing, appellant’s counsel openly acknowledged that appellant was on notice to pay restitution.

....

[C]ontrary to appellant's allegation, the terms and conditions of appellant's SIS were a part of the trial court's sentencing order and were also included in the clerk's record. In addition, Gilbreth testified that appellant had already partially complied with those term and conditions, after her release, when she made a payment on January 14, 2014. Thus, under these circumstances, we cannot say that the trial court clearly erred in revoking her suspended sentence.

Valencia, 2016 Ark. App. 176, at 4-6 (citation omitted).

There are two important distinctions between *Valencia* and the case at bar. In *Valencia*, the appellant acknowledged below that she was on notice of the condition that she was alleged to have violated, and this was further evidenced by the appellant's partial compliance with that condition, i.e., the partial payment of restitution. Here, Trudo made no similar acknowledgment that she was on notice of any condition to live a law-abiding life, and there was nothing else to show she had been apprised of the condition.

This case is more like *O'Neal v. State*, 2010 Ark. App. 241. In *O'Neal*, this court reversed the revocation of O'Neal's probation on the basis that he never received a written copy of his probation conditions. On appeal, the State argued that the judgment and commitment order was a written document that could satisfy the statute. We disagreed, stating in *O'Neal* that, although the judgment and commitment order was in the record, nothing of record demonstrated that O'Neal had received, read, signed, or initialed that document.

We hold that the trial court was without authority to revoke Trudo's probation because there was a lack of proof that Trudo had been given written notice of the conditions

she was found to have violated. Therefore, Trudo's revocation is reversed and the case dismissed.¹

Reversed and dismissed.

VIRDEN and MURPHY, JJ., agree.

Laura Avery, for appellant.

Leslie Rutledge, Att'y Gen., by: *Clayton P. Orr*, Ass't Att'y Gen., for appellee.

¹Trudo also argues, in the alternative, that instead of revoking her probation, the trial court could have held her in contempt. However, because we agree with Trudo's first argument and we reverse and dismiss the revocation on that basis, we need not address this alternative issue.