

Cite as 2024 Ark. App. 362

ARKANSAS COURT OF APPEALS

DIVISION III

No. CR-23-593

STEVEN RAY CASEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 5, 2024

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT
[NO. 47BCR-17-306]

HONORABLE KIMBERLY BOLING
BIBB, JUDGE

REMANDED TO SETTLE THE
RECORD

BRANDON J. HARRISON, Chief Judge

This is an appeal from probation-revocation proceedings we don't know quite enough about. According to a revocation petition filed in January 2022, on 6 June 2018, Steven Casey pleaded guilty in the Mississippi County Circuit Court (case No. 47BCR-17-306) to possession of a controlled substance, methamphetamine. The petition states that Casey received forty-eight months' probation. The circuit court revoked Casey's probation in February 2023—after probation had ended in June 2022—because it found, among other violations, that he had twice violated a condition not to “commit a criminal offense punishable by imprisonment.”

The State brought separate felony charges for the conduct alleged in one violation—felony fleeing—in December 2021, also in the Mississippi County Circuit Court (case No. 47BCR-22-15). The issue is whether postarrest proceedings that followed, which were

conducted jointly in the 47BCR-17-306 case (as a revocation matter) and 47BCR-22-15 (as a pretrial matter) gave the court jurisdiction to revoke Casey's probation after the probation term had expired.

On 22 February 2022, Casey appeared in the circuit court for arraignment, and the court entered a form scheduling order with case numbers 47BCR-22-15 and "47BCR-17-306 PTR" filled in. There was a notation in the scheduling order that Casey was personally served with the revocation petition. Casey signed it that day; his next court date was set for 6 May 2022. When he didn't show, a warrant was issued for his arrest in the revocation case (47BCR-17-306) and on the new charge (47BCR-22-15) for failure to appear. The warrant noted the original charge in the revocation case (possession of a controlled substance) and fleeing, one of the probation violations alleged in the revocation petition. The warrant was served on Casey May 17.

Following two continuances (one occasioned by Casey's in-court medical emergency) and another failure to appear, the circuit court heard the revocation petition 7 February 2023, rejecting Casey's argument from *Rowton v. State*, 2020 Ark. App. 174, 598 S.W.3d 522, that it no longer had jurisdiction to revoke his probation. The court sentenced him to forty-eight months' imprisonment for violating conditions in a 6 June 2018 "order of probation or suspending imposition of sentence of judgment and commitment" by committing new crimes and using and possessing alcohol and methamphetamine.

Casey renews his jurisdiction argument on appeal. But we cannot decide it. Instead, we remand to settle the record. Because probation is not a legal sentence for every offense or offender, we must confirm that the record in a revocation appeal includes the circuit

court proceedings that might determine the legality of the underlying sentence. *Washington v. State*, 2024 Ark. App. 268 (citing *Conic v. State*, 2023 Ark. App. 145, 662 S.W.3d 707). In *Washington*, we remanded where the record contained an order titled “Conditions of Probation” that might have accompanied the original probation sentence, but there was no sentencing order on the Administrative Office of the Courts’ prescribed form.

The gap in this record is several steps wider. Casey designated the entire record for appeal. But we’re missing everything before the January 2022 revocation petition—including core court papers like the conditions of Casey’s probation, his original sentencing order,¹ and the charging instrument on which his guilt was determined. The docket sheet and the transcript of Casey’s February 2022 arraignment should also be included. A supplemental record must be filed with this court’s clerk by 3 July 2024.

Remanded to settle the record.

KLAPPENBACH and MURPHY, JJ., agree.

Thompson & Holmes, by: *Jake Holmes*, for appellant.

Tim Griffin, Att’y Gen., by: *Jacob J. Jones*, Ass’t Att’y Gen., for appellee.

¹If no sentencing order exists, the court should prepare one on the AOC form sentencing order that reflects the offender and offense details, and the court’s actions, when probation was imposed. *Washington*, 2024 Ark. App. 268, at 3.