

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1261

September Term, 2015

D'ANTHONY WATTS

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: July 20, 2016

*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.

After the Circuit Court for Prince George’s County revoked his probation, D’Anthony Watts, appellant, filed an application for leave to appeal claiming that the circuit court erred in finding that he had violated the condition that he “obey all laws” because that condition was not included in the “updated statement of charges” filed by the Division of Parole and Probation. We grant the application for leave to appeal and, for the reasons that follow, we reverse and remand this matter for further proceedings.

BACKGROUND

In 2013, Watts pleaded guilty to theft and firearm offenses and was sentenced to a total term of fifteen years’ imprisonment, all but four and one-half years suspended. On or about June 11, 2014, Watts was released from prison and began serving a five-year term of supervised probation, which was subject to all standard conditions. About one month later, Watts was arrested and charged with first-degree burglary, attempted robbery, conspiracy to commit armed robbery, use of a handgun in the commission of a felony or crime of violence, and related offenses. On July 18, 2014, the Department of Public Safety and Correctional Services, Division of Parole and Probation, filed a “Supervision Summary” with the court informing it of Watts’ arrest and requesting the issuance of a warrant. Attached to the Supervision Summary was a “Statement of Charges” alleging that Watts had violated certain conditions of his probation. Specifically, it stated:

Condition # 2: Work and/or attend school regularly as directed and provide verification to your Supervising Agent.

Mr. Watts has failed to provide verification to this Agent that he is either employed or attending school regularly.

Condition # 4: Obey All Laws.

On 7/11/2014, this Agent received notification that Mr. Watts was arrested on 07/10/2014 in Prince George's County for the charges of ATT-BURGLARY-FIRST DEGREE, ATT-ROBBERY, ARMED ROBBERY, CON-ARMED ROBBERY, and CON-ROBBERY; case #1E00547702. Due to this new arrest Mr. Watts is in violation of this condition of his Supervision.

Condition # 6: Get permission from the Court before owning, possessing, using, or having under your control any dangerous weapon or firearm of any description.

Mr. Watts never received permission from this Agent or provided verification to this Agent from the Courts that stated he could possess a dangerous weapon or firearm. By being arrested on 07/10/2014 in Prince George's County for the charges of ATT-ROBBERY, ARMED ROBBERY, CON-ARMED ROBBERY, and CON-ROBBERY; case #1E00547702; Mr. Watts is in violation of this condition of his Supervision.

(Emphasis added.)

On March 24, 2015, prior to the hearing on the violation of probation, Watts appeared in court for trial on the new charges he had incurred after his release from prison.¹ Those charges were nol prossed. That disposition prompted the Division of Parole and Probation to file a second Supervision Summary with the court, along with an "updated statement of charges." In the second Supervision Summary, filed on April 8, 2015, the probation agent made the following remarks:

¹ The charges had initially been filed in the District Court of Maryland for Prince George's County as Case Number 1E00547702. The case was later transferred to the Circuit Court for Prince George's County and assigned Case Number CT141066D. It appears that Watts was held pending trial and pending the hearing on the violation of probation.

References made to Request for Warrant report submitted on 07/11/2014.

This report is being submitted to inform the Court of the adjudication of the pending charges in the case stated below.

Due to the nature of Mr. Watts criminal history, Mr. Watts has been identified as a violent offender under the Violence Prevention Initiative (VPI) Program with the Division of Parole and Probation. Offenders in this category are more likely to be re-arrested for violent and/or drug offenses.

Mr. Watts attended Trial for the charges in case #CT121066D on 03/24/2015. On that date all charges under that case were entered Nolle Prosequi. Mr. Watts was released in that case and in [sic] currently being held in this case.

Although the charges under the above case were adjudicated; Mr. Watts still has pending technical violations that require the Courts attention. This Agent would like to add to those violations that Mr. Watts failed to notify this Agent after he was arrested for the charges under case #CT141066D on 07/10/2014.

In view of the above, this Agent is submitting this report for the Courts to take the action they deem necessary in this case. Moreover this Agent would like to **amend the Statement of Charges of the Request For Warrant report submitted on 07/11/2014 to include the violation listed above. This Agent is attaching an updated Statement of Charges to this report for Your Honor's reference.**

(Emphasis added.)

An "UPDATED STATEMENT OF CHARGES AS OF 04/02/2015" was attached, alleging that Watts had "violated the following conditions of supervision":

Condition #2: Work and/or attend school regularly as directed and provide verification to your Supervising Agent.

Mr. Watts has failed to provide verification to this Agent that he is either employed or attending school regularly.

Condition #5: Notify your Supervising Agent at once if charged with a criminal offense, includingailable traffic offenses.

Mr. Watts failed to notify this Agent of the arrest he received for the charges in case #CT141066D on 07/10/2014.

Condition #6: Get permission from the Court before owning, possessing, using, or having under your control any dangerous weapon or firearm of any description.

Mr. Watts never received permission from this Agent or provided verification to this Agent from the Courts that stated he could possess a dangerous weapon or firearm. By being arrested on 07/10/2014 in Prince George’s County for the charges of ATT-ROBBERY, ARMED ROBBERY, CON-ARMED ROBBERY, CON-ROBBERY and USE HANDGUN/CRIME OF VIOLENCE/COMM; case #1E00547702; Mr. Watts is in violation of this condition of his Supervision.

(Emphasis added.)

This “updated statement of charges” repeated the allegations contained in the original statement of charges that Watts had violated conditions #2 and #6 and added an allegation that Watts had violated condition #5. But, of particular relevance, it did not allege (as it did in the original statement of charges) that Watts had violated condition #4 (“obey all laws”). On April 14, 2015, less than a week after the amended statement of charges was filed with the court, a violation of probation hearing was held.

During cross-examination of the probation agent, Watts’s counsel elicited the fact that the updated statement of charges did not include the allegation that Watts had violated condition #4 (“obey all laws”). The agent’s only explanation was that it was included in the “original report” and that his supervisor had approved the updated report without changes.

The State then, among other things, presented evidence relating to the incident giving rise to the criminal charges Watts' incurred while on probation and thereafter claimed that it had proven, by a preponderance of the evidence, that Watts had violated condition #4 (failed to obey all laws), condition #2 (failed to provide verification of employment or attendance at school), condition #5 (failed to notify the agent that he had been arrested), and condition #6 (failed to obtain permission to possess a firearm). Watts' counsel responded that condition #4 (obey all laws) was "a moot issue" because it did not appear on the amended statement of charges. The court found, however, that the amended statement of charges was "actually a supplemental petition" and that the State had not "withdrawn" the allegation that Watts had violated the condition that he "obey all laws." Then, concluding that Watts had violated condition #4 (failed to obey all laws), condition #2 (failed to provide verification of employment or attendance at school), and condition #5 (failed to notify the agent that he had been arrested), the court ordered Watts to serve thirteen years, six months of his previously suspended sentence.

DISCUSSION

The issue before us is whether the circuit court erred in revoking Watts' probation for, among other things, failing to "obey all laws" because that charge, though included in the original statement of charges, was subsequently left out of the "updated" statement of charges. In other words, we must decide whether the updated statement of charges merely supplemented the original statement of charges, as the circuit court found, or altogether

replaced that statement of charges. Under the particular facts of this case, we hold that the updated statement of charges amended the original statement of charges and thereby superceded that document. And, hence, the allegation that Watts had violated condition #4 (obey all laws) was not properly before the circuit court and that court therefore erred in considering that charge in revoking Watts' probation.

“Probation is a matter of grace.” *Smith v. State*, 306 Md. 1, 6 (1986). Thus, a “probationer is entitled to retain his liberty as long as he substantially abides by the conditions of his probation.” *Dean v. State*, 291 Md. 198, 202 (1981). If the State or the court believes that a probationer has violated a condition of probation, a revocation of probation proceeding is initiated. That is done “by an order directing the issuance of a summons or warrant.” Md. Rule 4-347(a). “The order may be issued by the court on its own initiative or on a verified petition of the State’s Attorney or the Division of Parole and Probation.” *Id.* “The petition . . . shall state each condition of probation that the defendant is charged with having violated and the nature of the violation.” *Id.* Then, after a “copy of the petition, if any, and the order [is] served on the defendant with the summons or warrant,” Rule 4-347(b), a hearing is held “to determine whether a violation has occurred and, if so, whether probation should be revoked.” Rule 4-347(e).

“A violation of probation case is firmly established as a civil action” and, as such, “all of the panoply of rights usually associated with a criminal case was not an incident of a violation of probation case.” *Baldwin v. State*, 324 Md. 676, 682-683 (1991). Nonetheless,

given that a “violation of probation proceedings often involves depriving a defendant of his liberty,” it has been said that “at a constitutional minimum, due process considerations require that a probationer be afforded ‘written notice of the claimed violations of his probation.’” *Id.*, at 683 (quoting *Black v. Romano*, 471 U.S. 606, 612 (1985)). Applying that principle, in *Baldwin* the Court of Appeals vacated a decision to revoke Baldwin’s probation because, though the “narrative portion of the probation agent’s report” alleged that Baldwin had violated a particular condition of probation, that allegation was not included in the statement of “formal charge[s].” *Id.* at 682-684. *See also Mitchell v. State*, 58 Md. App. 113 (1984) (holding that the circuit court abused its discretion in revoking probation where the court based its decision on the violation of conditions that were not included in the notice or statement of charges provided to the probationer).

Here, the allegation that Watts had violated condition #4 (obey all laws) was included in the first statement of charges but omitted in the updated statement of charges filed after the new charges Watts’ had incurred (which formed the bases of the allegation that Watts had violated condition #4) were nol prossed. The narrative portion of the agent’s second report informed the court that the new charges had been nol prossed, but then stated that “Mr. Watts still has pending technical violations that require the Courts attention.” The report further informed the court that Parole & Probation “would like to add to those violations that Mr. Watts failed to notify [his] Agent after he was arrested” for the new charges. Attached to the report was a paper captioned “UPDATED STATEMENT OF CHARGES,” which as noted,

repeated the allegations from the original statement of charges that Watts had violated conditions #2 and #6, added the allegation that Watts had violated condition #5 but omitted the allegation that Watts had violated condition #4 (“obey all laws”). In our view, the “updated” statement of charges was not intended to supplement the original statement of charges, but in fact to supercede it.

Our rules of civil procedure lend further support to this conclusion. While those rules provide for the amendment of a pleading, the Court of Appeals has said that “when leave is granted to amend a declaration, not by adding an additional count, but by filing an amended declaration, the original declaration must be regarded as having been withdrawn.” *Shapiro v. Sherwood*, 254 Md. 235, 238 (1969) (citation omitted). The Court further noted that:

“An amended pleading which is complete in itself and does not refer to or adopt a former pleading as a part of it supersedes the former pleading. The original pleading is abandoned by the amendment and is no longer a part of the pleader’s averments against his adversary, and the plaintiff cannot avail himself of the allegations contained in the superseded pleading, unless they are set out in the amended pleading or referred to therein. If the amended pleading is successfully attacked, the original pleading is not thereby restored, nor may the court arbitrarily order that such pleading be restored.”

Id. at 239 (quotation omitted).

Here, the narrative portion of the second report did make a general reference to the original report but only to inform the court “of the adjudication of the pending [criminal] charges” referred to in the first report. The updated statement of charges did not incorporate by reference or adopt the original statement of charges. Nor did it simply add the additional allegation (the violation of condition #5). In short, the updated statement of charges

appeared to replace, not merely supplement, the original statement of charges. Thus, given the nol pros of the new criminal charges, and the lack of any indication in the updated statement of charges that the State was going forward on that charge despite the nol pros, a reasonable inference was that the State had abandoned its allegation that Watts had violated condition #4 (“obey all laws”).² Under this particular set of circumstances, we hold that the updated statement of charges superseded the original one and consequently, the circuit court erred in relying on Watts’ violation of condition 4 when it revoked his probation.

A decision to revoke probation “based in whole or part on improper grounds cannot stand.” *Smith, supra*, 306 Md. at 7. Because it is unclear whether the circuit court would have revoked Watts’ probation without the condition #4 violation, we reverse and remand this case to the circuit court to determine whether revocation of probation is appropriate based on its findings that Watts had also violated conditions #2 (failed to provide verification of employment or attendance at school) and #5 (failed to notify the agent that he had been arrested).

**APPLICATION FOR LEAVE TO APPEAL GRANTED.
JUDGMENT OF THE CIRCUIT COURT FOR PRINCE
GEORGE’S COUNTY TERMINATING PROBATION
REVERSED. CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLEE.**

² A nol pros – or even an acquittal – of criminal charges does not preclude a court from revoking probation based on those charges where, at a revocation of probation proceeding, the State proves, by a preponderance of the evidence, that the probationer committed the offense(s). *Gibson v. State*, 328 Md. 687 (1992).