

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 0052, 0194, 0195, 0196, 0197

September Term, 2016

IN RE: JOHN D.

Eyler, Deborah S.,
Woodward,
Nazarian,

JJ.

Opinion by Woodward, J.

Filed: December 14, 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.

On January 4, 2016, the Circuit Court for Prince George’s County, sitting as a juvenile court, found appellant, John D., in violation of his probation in five separate cases. On February 2, 2016, the court committed appellant to a non-community residential facility “Level B” placement, and directed the State and the Department of Juvenile Services (“DJS”) to determine where he should be placed. At a review hearing on March 1, 2016, the court amended its order and committed appellant to a secured facility “Level A” placement. In this appeal, appellant presents the following question for our review:¹

Did the juvenile court err in finding that appellant violated the conditions of his probation?

For the reasons discussed below, we assign no error and affirm.

BACKGROUND

Appellant has had five juvenile cases of varying charges. On February 1, 2012, appellant entered pleas of involved in two of these separate juvenile cases. In the first case, appellant entered a plea of involved to malicious destruction of property. In the second case, appellant entered a plea of involved to robbery. On March 5, 2012, the court committed appellant to “Level B” placement.

Prior to the first two cases, on May 3, 2011, in a separate matter, the Circuit Court for Anne Arundel County, sitting as a juvenile court, found appellant to have committed

¹ Appellant phrased the question presented as follows:

Did the juvenile court err in finding that [appellant] violated the conditions of his probation on the basis that he failed to report where [appellant] was not charged with violating that condition of his probation?

the delinquent act of malicious destruction of property and placed him on probation. On January 23, 2013, the case was transferred to Prince George’s County,² and became the third case.

On November 5, 2013, in the fourth case appellant entered a plea of involved to unauthorized use of a vehicle, leaving the scene of an accident, and theft. On January 2, 2014, appellant was committed to “Level A” placement.

On February 4, 2014, in the fifth case appellant entered a plea of involved to robbery and was committed to “Level A” placement.

On May 7, 2015, after a number of review hearings, the juvenile court rescinded the commitments in all five cases, and placed appellant on probation.

On November 25, 2015, DJS filed a Court Memorandum in all five cases, requesting that the juvenile court issue a writ, alleging that appellant was in violation of his probation. DJS alleged, in relevant part, that after appellant was released from GPS monitoring, he was “non-compliant with weekly VPI contacts and random curfew checks.” Further, they alleged that he had missed “many home visit contacts,” and that it had been “extremely difficult to make contact” with him. On December 1, 2015, the court issued a writ for appellant. On December 11, 2015, DJS filed a Petition for the Revocation or Revision of Supervision or Commitment Order, requesting the court revoke appellant’s probation for the following reasons:

1. Failure to comply with curfew;

² There is no clear explanation in the record as to why the case was transferred from Anne Arundel County to Prince George’s County.

2. Failure to abide by rules of the home and respect parents/guardians; []
3. Failure to refrain [sic] from illegal drugs and/or alcohol[; and]
4. Failure to obey all laws (new pending adult charges).

On December 11, 2015, a writ review hearing was held, and the juvenile court remanded appellant to the custody of DJS for detention pending a probation revocation hearing.

On January 4, 2016, a violation of probation hearing was held, during which a representative from DJS advised the court that appellant had adult matters pending and requested the “violation be withdrawn and the case be closed unsuccessfully.” The court refused to close the cases, and ultimately found appellant in violation of his probation. The court then continued the matter so that the parties could determine the posture of appellant’s pending adult matter.

On February 2, 2016, the court committed appellant to “Level B” placement. At a review hearing held on March 1, 2016, the State noted that based on his age of over eighteen years, appellant had been rejected from “Level B” placement, and requested that the commitment be modified. The court granted the State’s request and modified its commitment to “Level A” placement.

On March 3, 2016, appellant noted this appeal. On March 28, 2016, a review hearing was held at which time all five cases were closed and appellant was released from DJS custody.

In a separate case, appellant was charged as an adult in Anne Arundel County with Theft Less than \$1,000. He pled guilty to that charge on June 2, 2016.

DISCUSSION

Appellant contends that “it was improper for the court to find that [he] had violated his probation, and to revoke his probation, on the basis that he failed to report,” because the “petition for revocation of probation/show cause order did not charge [him] with failure to report.” He argues that “as a matter of due process and under [Maryland] Rule 11-116 a probationer is entitled to written notice of the conditions of probation that he is alleged to have violated.”

The State responds that, because the court closed the cases and released appellant from his placement on March 28, 2016, appellant’s “complaint regarding the juvenile court’s revocation of his probation is moot and his appeal subject to dismissal[.]” “Moreover,” the State argues, “as a result of his guilty plea to adult criminal charges in Anne Arundel County on June 2, 2016, the juvenile court’s jurisdiction over [appellant] was terminated,” thereby further rendering appellant’s complaint moot. Further, the State argues that “if not moot, the juvenile court correctly exercised its discretion in finding [appellant] in violation of his juvenile probation.”

In his reply brief, appellant argues that the complaint is not moot, because a judge may view his juvenile record during sentencing if he is subsequently convicted of a crime, which could have an adverse impact on his chances of parole. We hold that appellant’s complaint is moot. Even if appellant’s claim is not moot, the juvenile court did not abuse its discretion when it found that appellant was in violation of his probation.

I. Appellant’s Claim of Error is Moot

Courts “normally should decline to address the merits of a moot case.” *In re: W.Y.*, 228 Md. App. 596, 609 (2016). “A question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.” *Attorney General v. Anne Arundel County School Bus Contractors Ass’n, Inc.*, 286 Md. 324, 327 (1979). A reviewing court “may decide a moot question where there is an imperative and manifest urgency to establish a rule of future conduct in matters of important public concern[.]” *Id.* at 328. An appellate court may on a motion or on its own initiative, dismiss an appeal where the case has become moot. Md. Rule 8-602(a)(10). The juvenile “court’s jurisdiction is terminated over a person who has reached 18 years of age when he is convicted of a crime[.]” Md. Code (1974, 2013 Repl. Vol.), § 3-8A-07(c) of the Cts. & Jud. Proc. Article (“CJP”).

In the present case, each of the juvenile cases before this Court were closed on March 28, 2016, and appellant was released from his commitments. Further, the jurisdiction of the juvenile court was terminated on June 2, 2016, when appellant, then eighteen years old, was convicted of theft. Both of these events, which occurred after appellant filed the appeals in the instant cases, rendered the issue now before this Court moot.

Appellant argues that his appeal of the juvenile violation of probation finding is not rendered moot just because appellant has been released from his commitment, and his juvenile matters closed. We disagree.

In *Adkins v. State*, the Court of Appeals determined that an appeal of an adult violation of probation finding is not moot where the probationer has already served his sentence, because “[i]t is the violation of probation finding, rather than the service of the sentence, that will have collateral legal consequences.” 324 Md. 641, 654 (1991). “Where there are no direct consequences, ‘a criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction.’” *Id.* at 647 (quoting *Sibron v. New York*, 392 U.S. 40, 57 (1968)). The Court found that the collateral consequence that the violation of probation finding could be “considered in connection with sentencing for a subsequent conviction,” made the appeal of the probation violation finding not moot where the petitioner had already completed his sentence. *Id.* at 654.

The case before us, however, is a juvenile matter, and the collateral consequences are not the same. Unlike adult criminal records, the records of juvenile proceedings are “confidential and shall not be open to inspection except by order of the court or as otherwise expressly provided by law.” Md. Rule 11-121(a). Further, the rule provides for the sealing of juvenile records upon the termination of the court’s juvenile jurisdiction. “A juvenile delinquency adjudication is not a criminal conviction[,]” and therefore may not be used to impeach a witness in a subsequent adult criminal matter. *Williams v. State*, 342 Md. 724, 741-42 (1996) *overruled in part by Wengert v. State*, 364 Md. 76 (2001). The potential use of appellant’s juvenile violation of probation finding in connection with the sentencing of a subsequent adult criminal conviction is so remote and speculative that it does not qualify as a collateral consequence, which would have an effect on the mootness of appellant’s

appeal. This is particularly true in light of appellant’s recent adult theft conviction, in which he received a suspended sentence and was placed on probation.

II. Violation of Probation Finding

Even if the complaint is not moot, the juvenile court did not abuse its discretion when it found appellant was in violation of his probation. “[A] probation revocation case typically involves two stages: ‘(1) a retrospective factual question whether the probationer has violated a condition of probation; and (2) a discretionary determination by the sentencing authority whether violation of a condition warrants revocation of probation.’” *Hammonds v. State*, 436 Md. 22, 31 (2013) (quoting *Wink v. State*, 317 Md. 330, 332 (1989)). The State must prove the violation of probation by a preponderance of the evidence. *Id.* at 31. We review on appeal “whether discretion was abused for want of any reasonable basis for the revocation.” *Id.* at 32 (quoting *Wink*, 317 Md. at 332). A trial court’s revocation of probation will not be overturned on appeal unless it is “clearly erroneous or legally insufficient.” *Id.* at 32.

Maryland Rule 11-116 governs violation of probation proceedings in juvenile cases and reads in relevant part as follows:

(a) Revisory Power. An order of the court may be modified or vacated if the court finds that action to be in the best interest of the child or the public, except in cases involving commitment of a child to the Department of Health and Mental Hygiene for placement in a State mental hospital. In cases involving such commitment the court shall proceed as provided in Rule 11-115.

(b) Sua Sponte or on Petition. The court may proceed under section a. of this Rule on its own motion, or on the petition of any party or other person, institution or agency having supervision or custody of the respondent, setting forth in concise terms the grounds upon

which the relief is requested. If the court proceeds on its own motion, the order shall set forth the grounds on which it is based.

This rule, as appellant concedes, does not require that the petition or show cause order explicitly state the conditions of violation. In fact, the rule allows for a court to *sua sponte* modify or vacate a previous order provided that it “set[] forth in concise terms the grounds upon which the relief is requested.”

“Juvenile proceedings are of a special species that has been designed by the General Assembly in response to a particular need and to meet a peculiar problem.” *In re Appeal Misc. No. 32*, 29 Md. App. 701, 704 (1976). Juvenile court dispositions “are not to be considered as punishment for a crime nor are adjudications of delinquency ‘convictions’, as that word is generally applied with respect to criminal proceedings.” *Id.* The purpose statement of the Juvenile Causes Act sets forth the purpose of juvenile proceedings as follows:

- (1) To ensure that the Juvenile Justice System balances the following objectives for children who have committed delinquent acts:
 - (i) Public safety and the protection of the community;
 - (ii) Accountability of the child to the victim and the community for offenses committed; and
 - (iii) Competency and character development to assist children in becoming responsible and productive members of society;
- (2) To hold parents of children found to be delinquent responsible for the child's behavior and accountable to the victim and the community;
- (3) To hold parents of children found to be delinquent or in need of supervision responsible, where possible, for remedying the circumstances that required the court's intervention;

(4) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;

(5) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;

(6) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;

(7) To provide to children in State care and custody:

- (i) A safe, humane, and caring environment; and
- (ii) Access to required services; and

(8) To provide judicial procedures for carrying out the provisions of this subtitle.

CJP § 3-8A-02(a).

In the present case, DJS filed a Petition for the Revocation or Revision of Supervision or Commitment Order alleging, among other things, that appellant failed to “comply with curfew,” failed to “abide by rules of the home and respect parents/guardians,” and failed to “obey all laws.” At the hearing, the court was advised that appellant had pending adult criminal cases in Anne Arundel County and Prince George’s County. The court then heard testimony from a DJS case management program supervisor that as a condition of his probation, appellant was required to “have two weekly face-to-face contacts as well as two telephone contacts.” Appellant, however, “stopped reporting and stopped responding to telephone efforts from [DJS] staff” in November 2015. The last contact DJS had with appellant came on November 13, 2015, when a case manager

went to appellant’s home, but appellant was not there. The case manager then called appellant who indicated that “he would be on his way home[,]” but “all subsequent efforts after that were unsuccessful[.]” In early December 2015, DJS received an email from the District of Columbia advising that appellant had been detained.

After defense counsel argued that his probation should not be revoked because the juvenile court’s show cause order did not charge appellant with failure to report, the court found appellant in violation of his probation and stated, “[a]ctually there are two other general conditions [imposed on appellant], one is to report and the other one is adhere to all the rules and regulations, that’s B and C.” The evidence presented that DJS was unsuccessful in its attempts to contact appellant after November 13, 2015, per the DJS rules and regulations imposed upon him, supported the court’s ruling that appellant was in violation of his probation.

The court’s statement that appellant was required to “report” and to “adhere to all the rules and regulations” prior to finding appellant in violation is sufficient to satisfy the requirement of Md. Rule 11-116(b) that the court “set forth the grounds on which [its order] is based.”

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**