

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,)
)
 Plaintiff-Appellee,)
)
 vs.)
)
 MANUEL ANTHONY ANGOCO,)
)
 Defendant-Appellant.)
 _____)

Supreme Court Case No. CRA97-010
Superior Court Case No. CF0053-94

OPINION

Filed: July 6, 1998

Cite as: 1998 Guam 10

Appeal from the Superior Court of Guam

Argued and Submitted on February 17, 1998

Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and BENJAMIN J. F. CRUZ, Associate Justices.

CRUZ, J:

[1] Defendant-Appellant makes this appeal pursuant to the trial court's attempt to extend its jurisdiction over the Defendant-Appellant after the expiration of his probationary term. The trial court revoked the Defendant-Appellant's probation after his probationary period had ended and, as a result, the Defendant-Appellant was sentenced to incarceration for thirty (30) days. This court, after reviewing the applicable statutes regarding the trial court's jurisdiction over probation, finds that the trial court acted beyond its jurisdiction in revoking the Defendant-Appellant's probation and in ordering incarceration. Therefore, the trial court's decision is hereby REVERSED.

FACTUAL AND PROCEDURAL BACKGROUND

[2] The Defendant-Appellant was indicted in Superior Court Case Number CF0053-94, for theft, as a third degree felony on February 25, 1994. The Defendant-Appellant subsequently pled guilty, pursuant to a plea agreement, to theft as a misdemeanor with the judgment being filed on August 29, 1994. The judgment imposed several conditions on the Defendant-Appellant, including the requirement that he pay a fine to the Victim's Compensation Fund, perform community service hours, and be placed on two (2) years probation beginning August 15, 1994. That two year probationary period was to end on August 15, 1996. A probation violation was later alleged and summons was issued on Feb. 10, 1997. On June 16, 1997 a revocation of probation hearing was held. Counsel for the Defendant-Appellant requested that the summons be quashed and the matter dismissed asserting the court lacked jurisdiction, pursuant to 9 GCA § 80.66 (1993), because the probationary period had expired. On June 16, 1997, the court heard from the probation officer, Officer David Uson, the Defendant, and defense counsel. As a result, the court made a ruling from the bench revoking probation and sentenced the Defendant-Appellant to thirty (30) days

incarceration. Included in the record on appeal were the minutes and the transcript from the June 16, 1997 hearing which memorialized the court's intent that the revocation ruling was a final disposition of the case. Although this court would prefer written orders for purposes of establishing jurisdiction on appeal, the trial court's ruling is sufficient to establish that a final order in the case was made at that time. The Defendant-Appellant filed a timely Notice of Appeal on June 26, 1997.

ISSUES

[3] On appeal, the Defendant-Appellant raises the issue of whether the trial court retained jurisdiction to revoke the Defendant-Appellant's probation after the probationary period had terminated. Furthermore, should this court find that the trial court still retained jurisdiction, the Appellant argues that his due process rights were violated when the trial court revoked the Defendant-Appellant's probation.

ANALYSIS

[4] The court has jurisdiction over this matter pursuant to 48 U.S.C. § 1424-3(d) (1984) and 7 GCA §3107(b) (1994). Questions of jurisdiction are reviewed *de novo*. *People v. Quichocho*, 1997 Guam 13, ¶ 3. The court reviews the trial court's revocation of a probationer's probation for clear abuse of discretion. *U.S. v. Daly*, 839 F.2d 598, 599-600 (9th Cir. 1988).

I.

[5] This court first addresses the threshold issue of whether the statute is facially unambiguous. The statute provides in relevant part:

§ 80.66. Revocation of Probation: When Permitted.

(a) At any time before the discharge of the offender or the termination of the period of suspension or probation:

(1) upon a showing of probable cause that an offender has violated a

condition of his suspension or probation, the court may summon the offender to appear before it or may issue a warrant for his arrest. The warrant or summons shall be served in the manner provided by 8 GCA §15.70 (Criminal Procedure). The offender may be arrested without a warrant only in those circumstances where such an arrest is otherwise permitted by law;

(2) the court, if satisfied that the offender has inexcusably failed to comply with a substantial requirement imposed as a condition of the order may revoke the suspension or probation and sentence or re-sentence the offender. Violation of a condition shall not result in revocation, however, unless the court determines that revocation under all the circumstances then existing will best satisfy the ends of justice and the best interests of the public.

9 GCA § 80.66(a) (1993). Should ambiguities in the language of a statute exist it becomes necessary for the court to interpret the statute's meaning. However, no ambiguity in the language of the statute in question exists, and the language of the statute is plain on its face and straight forward in its meaning. The plain meaning rule for statutory interpretation provides that "if the language of a statute is clear and there is no ambiguity, then there is no need to 'interpret' the language by resorting to the legislative history or other extrinsic aids." *Church of Scientology of California v. U.S. Dept. of Justice*, 612 F.2d 417, 421 (9th Cir. 1979). The statute is clear: action must be taken against the probationer for violations of probation before the termination of the probationary period. 9 GCA § 80.66(a). The statutes do not provide for any extension of time or for any tolling of the probationary period which would allow the court to retain jurisdiction past the probationary period.¹ The parties are in agreement as to the trial court's lack of jurisdiction to revoke probation beyond the probationary period, pursuant to the statutory authority.² In other jurisdictions it has been

¹Former Guam Penal Code § 1232 (1966) permitted probation to be revoked for up to six (6) months beyond the probationary period, however, the statute was repealed and the language for extension was omitted from the current statute.

²Other jurisdictions share the same view, based on their own statutory authority, and allow probation to be revoked only if a revocation hearing is held and a revocation order is issued within the probationary period. *Keller v. Super. Ct. In & For Cty. of Maricopa*, 524 P.2d 956 (Ariz. Ct. App. 1974) (At the time the Arizona court construed the state's revocation statute, the language was similar to Guam's. The probation revocation statute has since been amended in Arizona to provide that a filing of a petition for revocation tolls the running of the probationary period.); *see also People v. Cooper*, 54 Misc.2d 42, 280 N.Y.S.2d 920 (N.Y. Cty. Ct. 1967).

determined that courts do retain jurisdiction beyond the probationary period, either for a reasonable

period of time thereafter³ or if informal action has been initiated during the probationary period⁴, for example, the filing of a probation violation report within the probationary period. However, in these jurisdictions where probation need not be formally revoked before the expiration of the probationary period, the courts were construing the individual applicable state statute.⁵ The former Guam Penal Code § 1232 also allowed for probation to be revoked beyond the probationary term. Policy goals of the specific jurisdictions are different. This court may only act within its authority and cannot change the meaning of the statute.⁶ Furthermore, the court does not need to look to the court decisions of other jurisdictions to interpret what the statute clearly states and means.

[6] As applied to the facts of this case, the Defendant-Appellant's probationary period began on August 15, 1994, as a result of his plea agreement with the government and the trial court's acceptance and incorporation of that agreement into the trial court's judgment. A two-year probationary period was ordered, which would have ended on August 15, 1996. Although the

³Some jurisdictions construe their own state statutes to mean that the court maintains jurisdiction to hear revocation hearings not only within the probationary period, but also for a reasonable period of time thereafter. *State v. White*, 225 N.W. 2d 426, 427 (Neb. 1975); *Phoenix v. Nebraska*, 77 N.W.2d 237, 241 (Neb. 1956). In *Phoenix*, the court held that it could revoke probation for a violation occurring within the probationary period within a reasonable time after the probationary period has expired. *Id.* The statute in *Phoenix*, did not specify that the court could only revoke probation during the period of probation.

⁴Many states have determined that the ending of the probationary period terminates the court's jurisdiction; however, the commencement of proceedings, such as the issuance of a warrant for arrest, is sufficient to allow the court to retain jurisdiction and conduct a revocation hearing, even if such hearing occurs after the probationary period expires. *New Jersey v. Gibson*, 384 A.2d 178, 183 (N.J. Super. Ct. App. Div. 1978) (holding the court has jurisdiction if proceedings have been initiated in some fashion before the probationary term expires); *People v. Gore*, 774 P.2d 877, 882 (Mont. 1989) (holding that if revocation proceedings are initiated during the probation term, the court will retain jurisdiction).

⁵The New Jersey and Colorado statutes regarding probation revocation either contain in themselves or in a separate code section a tolling provision which the Guam laws do not. In Colorado, the statutes do not provide for a maximum term for probation. Furthermore, although the Guam statute is based on repealed New Jersey statute 2A:168-4 which was relied upon in the *Gibson* case, the language of 9 GCA § 80.66 is different so as to clearly distinguish that the phrase "[a]t any time before . . . the termination of the period of . . . probation" modifies not only the action of issuing a warrant, but also revocation of probation by the court, which is different from the New Jersey statute.

⁶The court must presume that the omission of certain language in the amended statute expresses a clear intention of the legislature to prevent revocation of probation from occurring beyond the probationary term.

alleged probation violation may have occurred within the probationary period, it was not brought to the attention of the trial court in a timely fashion. Consequently, probation was not revoked until June 16, 1997, almost a year after probation ended. Because probation was not revoked during the probationary period, the trial court lacked jurisdiction to take action after the term had ended.

II.

[7] As its second argument, the Defendant-Appellant asserts that his due process rights were violated when the trial court revoked probation and ordered incarceration without being presented sufficient evidence of a probation violation at the revocation hearing. Case law has established that a probationer faced with revocation of probation is not entitled to the full panoply of due process rights due other criminal defendants. *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593 (1972). However, a parolee's retains the following due process rights: (1) notice of claimed violations, (2) opportunity to appear and present evidence, (3) the conditioned right to confront adverse witnesses, (4) an independent decision maker, and (5) a written report of the hearing involved parole revocation proceedings. *Gagnon v. Scarpelli*, 411 U.S. 778, 786, 93 S.Ct. 1756, 1761 (1973). The minimal due process requirements set forth above were meant to be a diminished form of due process rights afforded to criminal defendants, and the court indicated that flexibility should be given and formality was not required. *Morrissey*, 408 U.S. at 489, 92 S.Ct. at 2604.

[8] Statutorily, a hearing must occur before revocation of probation may be ordered, pursuant to 9 GCA § 80.68 (1993)⁷ Although a hearing was conducted in the case at hand, the sufficiency of

⁷§ 80.68. Revocation: Hearing Required; Release Permitted; Confinement Provided for.

(a) The court shall not revoke a suspension or probation or increase the requirements imposed thereby on the offender except after a hearing upon written notice to the offender of the grounds on which such action is proposed. The offender shall have the right to hear and controvert the evidence against him, to offer evidence in his defense and to be represented by counsel.

the evidence presented is at issue. The standard of proof required by the Ninth Circuit is that the “evidence and facts be such as reasonably to satisfy the judge that the probationer's conduct has not been as required by the conditions of probation. The judge may revoke probation when reasonably satisfied that a state or federal law has been violated, and conviction is not essential.” *U.S. v. Guadarrama*, 742 F.2d 487, 489 (9th Cir. 1984) (citations omitted). Because a revocation hearing is not a formal criminal prosecution, traditional rules of evidence do not apply, and conventional substitutes for live testimony, including affidavits, depositions, letters and other documentary evidence are admissible. *U.S. v. Miller*, 514 F.2d 41 (9th Cir. 1975) (upholding the admission of hearsay testimony of a probation officer in establishing a probation violation); *Gagnon*, 411 U.S. at 782 n.5, 93 S.Ct. at 1760 n.5.

[9] A revocation hearing was held, at which the Appellant was present with counsel along with Probation Officer David Uson. Although no formal evidence was presented, Officer Uson relayed to the court the basis for the alleged violation. The Defendant-Appellant informed the trial court that a charge of family violence against him was dismissed with prejudice, that he pled guilty to a misdemeanor charge of unauthorized use of a motor vehicle, and that he was incarcerated for breaking parole. The low burden of proof required for establishing the occurrence of a violation does not leave much for reviewing courts to question of a trial court’s actions. Furthermore, the high standard of review provides a trial court with wide latitude in reaching a decision to revoke probation. However, in this case, having already determined that the trial court lacked jurisdiction to revoke probation, this court can merely outline the standard to be applied in similar proceedings in the future.

CONCLUSION

[10] The court does recognize that seemingly unjust results may occur, based on this court’s interpretation of the law, especially in the case of the last minute probation violator who will escape

punishment for violations which occur near the end of his probationary term because sufficient time is not available to properly revoke his probation. However, the court must act within the confines of the statute. A legislative act is the sole remedy for dealing with the problem of unpenalized probationers who violate any or all of their terms and conditions of probation.

[11] Despite the strictness of the statutory language, the trial courts themselves, along with the Probation Department, have further exacerbated the problem by failing to timely address probation violations as they occur, instead of choosing to wait until the probationary period has expired. The Probation Department is slow to act and then poor case management by the trial courts delay the proper proceedings beyond the probationary period. It is incumbent upon the trial courts and the Probation Department to take action and reevaluate current practices and procedures for addressing probation violations. It would be prudent, in order to rectify this problem, for trial courts to set further proceedings hearings, at the time when probation is imposed, for six months prior to the end of the probationary period. This hearing will provide the court, Probation, and the probationer the opportunity to review the status of the case and provide sufficient time should revocation become necessary.

[12] The trial court's decision to revoke probation in this case is hereby REVERSED, and the case is dismissed.

BENJAMIN J.F. CRUZ, Associate Justice

JANET HEALY WEEKS, Associate Justice

PETER C. SIGUENZA, Chief Justice