

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 10AP-449
Plaintiff-Appellee,	:	(C.P.C. No. 05CR-3665)
v.	:	No. 10AP-450
	:	(C.P.C. No. 05CR-435)
Robert K. Blanton,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on January 13, 2011

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

*Yeura R. Venters*, Public Defender, and *Paul Skendelas*, for appellant.

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APPEALS from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by defendant-appellant, Robert K. Blanton, from a judgment of the Franklin County Court of Common Pleas, denying appellant's motions to vacate parole revocation.

{¶2} On January 20, 2005, appellant was indicted in common pleas case No. 05CR-435 on one count of aggravated burglary, one count of burglary, and one count of felonious assault. On June 14, 2006, appellant entered a guilty plea to a stipulated

lesser-included offense of burglary. By judgment entry filed August 21, 2006, the trial court imposed a sentence of three years community control.

{¶3} On June 2, 2005, appellant was indicted in common pleas case No. 05CR-3665 on two counts of rape and two counts of unlawful sexual conduct with a minor. Appellant subsequently entered a guilty plea to one count of unlawful sexual conduct with a minor, and the court entered a nolle prosequi as to the remaining counts. Appellant received a sentence of three years community control, and was classified as a sexually oriented offender.

{¶4} In November 2007, appellant was indicted on one count of failure to provide notice of change of address, in violation of R.C. 2950.05. The indictment alleged that appellant failed to provide notice to the sheriff's department of at least 20 days prior to changing his address on October 4, 2007. A jury subsequently found appellant guilty of the charge.

{¶5} On December 11, 2007, a probation officer filed motions for revocation of appellant's probation in case Nos. 05CR-435 and 05CR-3665. The probation department sought revocation of probation based upon allegations that appellant: (1) failed to report for a scheduled office visit on October 2, 2007; (2) failed to provide a urine sample on September 27, 2007; (3) failed to notify his probation officer before moving to another residence; (4) worked in an occupied home; (5) was not residing at his registered address; (6) failed to notify his probation officer of an arrest by the Ohio Adult Parole Authority; (7) failed to make payments toward court costs for three months in 2007; and (8) failed to enter sex offender treatment.

{¶6} On August 26, 2008, the trial court conducted a sentencing hearing with respect to appellant's conviction for failure to provide notice of change of address; also at that time, the trial court considered the motions to revoke probation. During the hearing, stipulations were entered as to violations of community control in case Nos. 05CR-435 and 05CR-3665 based upon the new conviction. The trial court imposed a sentence of 17 months incarceration on the failure to provide notice conviction, with such sentence to run consecutive with the sentences in case Nos. 05CR-435 and 05CR-3665.

{¶7} Appellant appealed his conviction for failure to provide notice, raising six assignments of error, including two assignments of error asserting that the trial court erred in allowing the jury to be exposed to hearsay testimony. This court sustained those two assignments of error, thereby reversing and remanding the matter for a new trial. See *State v. Blanton*, 184 Ohio App.3d 611, 2009-Ohio-5334. Following remand, the state declined to seek a retrial, and the trial court filed a judgment entry on January 8, 2010, dismissing the case and vacating the sentence. The court's entry included language that the judgment did "not alter the court's Judgments in other cases involving Mr. Blanton."

{¶8} On March 18, 2010, appellant filed motions to vacate revocation of probation in case Nos. 05CR-435 and 05CR-3665. Appellant argued that the probation violations at issue were the result of his arrest and conviction for an offense that had now been overturned. Appellant argued that the revocation of probation should be vacated or, alternatively, that a hearing should be held requiring the state to establish violations of probation conditions.

{¶9} On March 30, 2010, the state filed a memorandum in opposition to the motions to vacate revocation. The state argued that, despite the reversal in conviction, there remained factual support to show that appellant had in fact moved from his registered address based upon his own admissions. The state also argued that res judicata applied because appellant failed to appeal from the revocations. On April 14, 2010, the trial court filed entries denying appellant's motions to vacate revocation.

{¶10} On appeal, appellant sets forth the following assignment of error for this court's review:

The trial court erred in failing to vacate the probation revocation order in the present cases as the order resulted from a conviction that was subsequently vacated because the verdict was based on unreliable and inadmissible hearsay. As a result, Appellant was denied a hearing on the remaining allegations, in violation of Due Process protections contained in the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

{¶11} Under Ohio law, "[p]arole and probation may be revoked even though criminal charges based on the same facts are dismissed, the defendant is acquitted, or the conviction is overturned, unless all factual support for the revocation is removed." *Barnett v. Ohio Adult Parole Auth.*, 81 Ohio St.3d 385, 387, 1998-Ohio-434, citing *Zanders v. Anderson*, 74 Ohio St.3d 269, 272, 1996-Ohio-46; *Flenoy v. Ohio Adult Parole Auth.* (1990), 56 Ohio St.3d 131, 132.

{¶12} Appellant argues there was insufficient factual support to uphold the revocation orders. Appellant asserts the trial court sought to avoid providing him a hearing by selectively pulling pieces of testimony from a transcript dominated by hearsay testimony. Appellant maintains that the court's conclusion he had moved from his

registered address at a motel was based upon hearsay information supplied by motel employees who never testified, as well as the fact that investigators who knocked on a motel door received no answer.

{¶13} In the present case, the trial court found that this court's reversal of appellant's conviction for failing to provide notice of a change of address did not remove all factual support for his parole revocation. Specifically, the trial court found in part: "Given statements against interest made by defendant and proven at his criminal trial (admitting that he knowingly violated his registration obligations in living at the motel and then moving) there was \* \* \* justification to revoke probation without considering any hearsay statements from former Motel employees." A review of the record supports the trial court's determination.

{¶14} At trial, Terri Bodell, a supervisor with the Ohio Adult Parole Authority, testified that she was assigned to supervise appellant in September 2007. Appellant, who is required to register with the Franklin County Sheriff's Department, indicated to Bodell that he would be residing at a motel located at 1800 Harrisburg Pike, Room 115, in Franklin County. On October 10, 2007, Bodell went to the motel "after curfew," (i.e., subsequent to 11:00 p.m.) and knocked on the door; Bodell did not receive any response. On October 26, 2007, Bodell arrested appellant for not residing at the registered address. On that date, appellant told Bodell "that he didn't have any money and that was the issue he had with the motel." (Tr. 62.) Appellant told Bodell that he had stayed at the motel for "a couple weeks." (Tr. 66.) Bodell further testified that, during a December 2007 hearing, appellant was also questioned about living at the motel, and he responded that "he

couldn't stay there because he didn't have the money." (Tr. 66.) Appellant stated that he "went to his uncle's" house. (Tr. 67.)

{¶15} Franklin County Sheriff's Detective David Crabtree testified that appellant, who is required to notify the department of a change of address within 20 days prior to moving, registered with the sheriff's department in September 2007. Appellant listed his address as the Hometown Motel, Harrisburg Pike. Detective Crabtree subsequently received information from a sheriff's deputy that appellant may have moved. The detective interviewed appellant on October 30, 2007. Appellant told the detective that, between October 4, 2007 and October 25, 2007, he was "[s]taying at his uncle's." (Tr. 97.) Appellant indicated he moved to his uncle's residence because he did not have enough money to remain at the motel. The detective testified that appellant did not provide the sheriff's department with notice that he was moving. On re-direct examination, Detective Crabtree testified that appellant told him that "[h]e was staying at his uncle's" residence on October 4, 2007. (Tr. 105.)

{¶16} Upon review, we conclude that the acquittal did not remove all factual support from the parole revocation. Rather, we agree with the trial court's determination that the non-hearsay admissions of appellant were sufficient for the court to have found factual support to revoke appellant's probation independent of any hearsay testimony. Because we reject appellant's contention that the acquittal of his conviction removed all factual support from the prior revocation of probation, we also find unpersuasive appellant's claim that he was denied due process by the trial court in denying his motions to vacate without holding a further hearing. Accordingly, the trial court did not err in failing to vacate the probation revocation orders.

{¶17} Based upon the foregoing, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

*Judgment affirmed.*

CONNOR and CUNNINGHAM, JJ., concur.

CUNNINGHAM, J., of the First Appellate District, sitting by assignment in the Tenth Appellate District.

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