

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

City of Toledo  
Appellee

Court of Appeals No. L-12-1229  
Trial Court No. CRB-11-16136

v.

Aaron A. Nova  
Appellant

**DECISION AND JUDGMENT**

Decided: March 22, 2013

\* \* \* \* \*

Jerome Phillips, for appellant.

\* \* \* \* \*

**YARBROUGH, J.**

**I. Introduction**

{¶1} Appellant, Aaron Nova, appeals from the judgment of the Toledo Municipal Court, which revoked his probation and enforced a suspended six-month jail sentence.

We reverse.

## A. Facts and Procedural Background

{¶2} On March 13, 2012, appellant pleaded no contest to one count of domestic violence, a misdemeanor of the first degree. The trial court found appellant guilty and sentenced him to six months in jail. The court then suspended the jail sentence and placed appellant on probation. One of the terms of probation was that appellant was to “Obey all city, state, and federal laws. Contact your Officer immediately if ticketed or arrested or placed on supervision (probation) with any other Court.”

{¶3} On August 7, 2012, appellant was charged with misdemeanor cruelty to animals. On August 14, 2012, appellant pleaded not guilty to the charge. Later that day, the trial court held a preliminary hearing on an allegation of probation violation based on the animal cruelty charge.<sup>1</sup> At that hearing, appellant, with counsel, admitted that he had been charged with cruelty to animals. Appellant then requested a hearing on whether he violated the terms of his probation. The trial court, however, understood the law to be that merely being charged with a crime is sufficient to violate probation. The court then found appellant in violation of his probation, and ordered that the suspended six-month sentence be enforced.

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<sup>1</sup> A probationer is entitled to two hearings: a preliminary hearing at the time of his arrest and detention to determine whether there is probable cause to believe that he has committed a violation of his probation, and a more comprehensive hearing prior to making the final revocation decision. *Gagnon v. Scarpelli*, 411 U.S. 778, 781-782, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973).

## B. Assignment of Error

{¶4} Appellant has timely appealed, raising a single assignment of error:

1. The trial court violated Appellant's right to Due Process when it found Appellant in violation of his probation without sufficient evidence.

## II. Analysis

{¶5} We review a trial court's revocation of probation for an abuse of discretion. *State v. Ohly*, 166 Ohio App.3d 808, 2006-Ohio-2353, 853 N.E.2d 675, ¶ 19 (6th Dist.). An abuse of discretion connotes that the trial court's attitude was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶6} "To support a finding for revocation of probation, the allegations need not be proven beyond a reasonable doubt but, rather, must be based only upon 'evidence of a substantial nature showing that revocation is justified.'" *Ohly* at ¶ 18, quoting *State v. Bland*, 6th Dist. No. H-96-031, 1997 WL 77679 (Feb. 21, 1997). "Substantial evidence is akin to a preponderance-of-the-evidence burden of proof." *Id.*

{¶7} Numerous Ohio courts have agreed with the proposition that merely being charged with a crime is not sufficient to show a violation of probation. *See, e.g., State v. Wagner*, 179 Ohio App.3d 165, 2008-Ohio-5765, 900 N.E.2d 1089, ¶ 42 (2d Dist.) ("[T]he fact that a criminal charge was filed, by itself, is not sufficient to prove, even by a preponderance of the evidence, that Wagner committed the criminal act."); *State v. Craig*, 130 Ohio App.3d 639, 642, 720 N.E.2d 966 (1st Dist.1998) ("[T]he mere fact of an arrest

cannot constitute a violation of a community-control sanction.”); *State v. Kidwell*, 10th Dist. No. 94APA06-883, 1995 WL 68164, \*2 (Feb. 16, 1995) (revocation of probation predicated solely upon arrest, without additional evidence that prohibited conduct actually occurred, is reversible error); *State v. Moine*, 72 Ohio App.3d 584, 589, 595 N.E.2d 524 (9th Dist.1991) (“Mere arrest does not constitute a violation of probation.”). Instead, the violation must be based on some inquiry into the facts supporting the charge. *See Craig* at 642 (“The trial court can, however, examine the evidence underlying the offender’s arrest and conclude from that evidence that he did not obey or abide by the law.”). Here, however, the only evidence adduced at the probation revocation hearing was appellant’s admission that he was charged with misdemeanor animal cruelty. No further inquiry was made. Therefore, we hold that the trial court abused its discretion in finding appellant in violation of his probation based solely on the fact that he was charged with another crime.

{¶8} Accordingly, appellant’s assignment of error is well-taken.

### **III. Conclusion**

{¶9} For the foregoing reasons, the judgment of the Toledo Municipal Court is reversed. The matter is remanded to the trial court for a hearing on whether appellant violated the terms of his probation. The state is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.