

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-352

JUNE TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
Michael J. Medeiros	}	
	}	DOCKET NO. 7205-12-99 CnCr

Trial Judge: Michael S. Kupersmith

In the above-entitled cause, the Clerk will enter:

Defendant Michael J. Medeiros appeals from the trial court=s order revoking his probation and ordering his incarceration. He asserts that: (1) the court abused its discretion by failing to make the findings necessary to support its decision; and (2) the evidence does not support the statutory grounds for revocation. We affirm.

Defendant has multiple criminal convictions and has been on probation for various offenses since April 1997. Defendant violated probation twice between 1997 and 2004; the State declined to bring a third VOP complaint in exchange for defendant=s plea of nolo contendere to a new charge of misdemeanor stalking. As a condition of probation for one of his convictions, defendant was required to successfully complete reparative probation to the satisfaction of his probation officer, and complete thirty days of work crew. In January 2005,

defendant's probation officer filed a VOP complaint alleging that defendant failed to meet with his probation officer as directed and failed to satisfactorily attend his work crew obligation as ordered.

After a hearing, the trial court found that defendant violated probation conditions. In reaching its disposition decision, the court found it significant that defendant had been on probation for many years but had never been successfully discharged. This indicated defendant's failure to make any effort, the court explained, and it demonstrated that defendant was not a candidate for probation. The court therefore revoked defendant's probation and imposed an aggregate sentence based on his underlying offenses of one to four years to serve. Defendant appealed.

Defendant argues that the trial court erred by failing to make any findings under 28 V.S.A. ' 303(b) to support its revocation decision. He maintains that the evidence does not support any of the grounds set forth in the statute. According to defendant, the trial court erroneously concluded that he was not a candidate for probation merely because he had been on probation for so long and Anyone who puts in any effort gets off probation. @

We find defendant's arguments without merit. Section 303(b) provides:

The court shall not revoke probation and order the confinement of the probationer unless the court finds on the basis of the original offense and the intervening conduct of the probationer that:

- (1) Confinement is necessary to protect the community from further criminal activity by the probationer; or
- (2) The probationer is in need of correctional treatment which can most effectively be provided if he is confined; or
- (3) It would unduly depreciate the seriousness of the violation if probation were not revoked.

We have explained that A[a] court need not specifically identify which of the alternatives set forth in ' 303(b) it

has employed so long as at least one readily supports the court's conclusion. @ State v. Millard, 149 Vt. 384, 387 (1988).

In this case, the evidence supports a finding that allowing defendant to continue on probation would unduly depreciate the seriousness of the violation. @ 28 V.S.A. ' 303(b)(3). The record shows that defendant has been on probation for various offenses for approximately eight years. During that period, he violated probation conditions twice, and he continued to commit new offenses. He has never been successfully discharged from probation. Indeed, as the trial court explained, defendant had been on probation for almost eight years on one offense, and for almost four-and-a-half years on his most recent offense. Defendant defied the direct orders of his probation officer on two occasions. He failed to report for work crew as required, and waited approximately ten weeks before providing his probation officer with any written excuse for his absence.

Defendant admittedly refused to keep appointments with his probation officer without excuse because he was afraid that he would be arrested for repeatedly failing to show up for work crew as required independently of his probation appointments. Defendant's proffered medical excuse for missing work crew, which was never offered to his probation officer at the time of his failure to appear, related to his absences in late January 2005, and was irrelevant to defendant's earlier failure to report.

In light of the evidence, the trial court reasonably concluded that defendant was not a candidate for continued probation. See State v. Brunet, 174 Vt. 135, 140 (2002) (explaining that purpose of revocation hearing is to decide whether the alternatives to incarceration which have been made available to a defendant remain viable for him @ and to determine whether the defendant remains a good risk for probation @) (citation and internal quotations omitted). Regardless of the accuracy of the trial court's general statement that anyone who puts in any effort gets off probation, @ the court's recognition that this defendant made little effort to successfully complete probation is supported by the record. That defendant simply failed to abide by his reporting conditions without excuse and failed to observe his work crew conditions is virtually uncontested. In turn, a failure to revoke probation in the face of such recalcitrance would depreciate the seriousness of defendant's elective violation of relatively minimal burdens of probation. Accordingly, revocation satisfied the

requirements of 28 V.S.A. ' 303(b)(3). We therefore find no error in the court=s decision to revoke defendant=s probation and order his incarceration. State v. Therrien, 140 Vt. 625, 627-28 (1982) (AWhen a violation of probation is established, the trial court has discretion, pursuant to 28 V.S.A. ' 304, to revoke probation and require the original sentence to be served Absent a showing that the trial court abused or withheld its discretion, the enforcement of the original sentence after a finding of violation of probation is without error.@).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice