

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 276

September Term, 2020

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JOSHUA CROCKETT

v.

STATE OF MARYLAND

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Kehoe,  
Gould,  
Salmon, James P.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Gould, J.

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Filed: November 17, 2020

\*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.

In November 2018, Joshua Crockett, appellant, pleaded guilty to credit card theft in the Circuit Court for Cecil County. He was given a suspended sentence of 18 months, with three years’ supervised probation. One of the conditions of probation was that he enroll in and complete the Cecil County Adult Drug Court Program (the “Drug Court Program”).

Mr. Crockett failed to complete the Drug Court Program, which led to a charge that he violated his probation. During the hearing on that charge, Mr. Crockett admitted to the violation but claimed that the violation was only “technical,” as defined in the Justice Reinvestment Act (the “JRA”), 2016 Md. Laws, ch. 515. The circuit court concluded otherwise and imposed a one-year term of incarceration.

Mr. Crockett filed a timely application for leave to appeal, which we granted. He now claims that the circuit court erred in concluding that he had committed a non-technical violation of probation. We agree and reverse the judgment of the circuit court.

### **BACKGROUND**

In a report filed on October 3, 2019, Mr. Crockett’s probation agent informed the circuit court that he had been “terminated from the Cecil County Adult Drug Court program on September 27, 2019 for continued non-compliance with the program” and that a violation of probation (“VOP”) hearing was scheduled for the following day. The statement of charges, filed at the same time, stated as follows:

It is alleged that the subject of this report has violated the following conditions of supervision:

Condition #33- Enroll in and complete the Cecil County Adult Drug Court program.

By being terminated from the Cecil County Adult Drug Court program on September 27, 2019 for continued non-compliance with the program. Mr. Crockett started Drug Court on November 30, 2018, overdosed that weekend and then had an emergency placement at Whitsitt on December 13, 2018. Mr. Crockett completed [Whitsitt] and was then placed at a recovery house, Opportunity House. A bench warrant was issued on December 31, 2018, due to Mr. Crockett leaving the recovery house and not returning to Cecil County. Mr. Crockett was picked up on January 17, 2019 and remained in jail between Cecil and Harford County until March 28, 2019. Mr. Crockett then entered into the Dexter House in North East, a recovery house, and continued with Drug Court. On May 5, 2019, Mr. Crockett was asked to leave the Dexter House for conflicts between him and the house. He was able to immediately get into Pastor Meekins recovery house, Monarch House, so the normal sanction request of 2 weeks in jail was held in abeyance. On June 5, 2019, a bench warrant issued for Mr. Crockett for being discharged from the Monarch House and he was picked up on July 9, 2019. At his drug court review on July 12, 2019, the team was recommending termination and he requested a 207 hearing. Mr. Crockett was held in the detention center until another placement was found for him at Salvation Army. He was released from the jail on August 12, 2019 to the Salvation Army and was discharged 2 days later for behavioral issues. On August 16, 2019, an instant test was done in court and he was positive for amphetamine, methamphetamine, buprenorphine, fentanyl and marijuana. Judge Whelan had Mr. Crockett placed into custody and the team asked for termination. Mr. Crockett remained in jail until another placement was found for him at the Helping Up Mission in Baltimore. Mr. Crockett went there on September 9, 2019 and was discharged for not producing for a urinalysis test on September 18, 2019. While Mr. Crockett did call the office he did not report back to the drug court office and a bench warrant was issued for him on September 20, 2019. Mr. Crockett was picked up on September 22, 2019 and when brought to drug court on September 27, 2019, the team requested termination and Mr. Crockett was agreeable to the termination.

During the VOP hearing, Mr. Crockett admitted to violating Condition 33, and the court, upon finding a proper factual basis for that admission, found Mr. Crockett guilty of violating his probation. There was a disagreement as to whether his violation was a technical violation. Defense counsel noted that the charged violation was neither absconding nor an allegation of a new offense. The State countered that the statute regarding technical violations does “not apply to drug court programs.”

The court ultimately concluded that Mr. Crockett had “absconded from treatment facilities” and that the violation was, accordingly, non-technical. The court then sentenced Mr. Crockett to one year’s incarceration, with credit for 110 days for time served. Mr. Crockett filed a timely application for leave to appeal, which we granted.

### **DISCUSSION**

Mr. Crockett contends that the circuit court erred in concluding that he absconded from treatment. He therefore maintains that he committed only a technical violation of probation. Moreover, because it was his first such violation, he claims that the circuit court erred in imposing a sentence greater than 15 days.<sup>1</sup>

The State seems to concede that the circuit court erred in finding that Mr. Crockett had absconded from the Drug Court Program. It nonetheless contends that the court

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<sup>1</sup> As Mr. Crockett points out, he has, by now, already served the entire sentence imposed by the circuit court in this case. Because he would suffer collateral consequences, affecting future cases, as a result of the circuit court’s finding of a non-technical violation (for example, a court may, in the future, be ill-disposed to grant him probation or a commitment under section 8-507 of the Health-General Article of the Annotated Code of Maryland (1982, Repl. Vol. 2019), we hold that this case is not moot.

properly sentenced Mr. Crockett, under section 6-223(d)(2)(ii) of the Criminal Procedure Article (“CP”) of the Maryland Annotated Code (2001, 2018 Repl. Vol.), because he “accumulated more than four violations in the drug court program[.]”

The JRA created a heretofore unknown category in Maryland law—the “technical” violation of probation. Prior to its enactment, it was settled that, upon a court’s finding that a defendant had violated any condition of probation, the court was “authorized to ‘impose any sentence that might have originally been imposed for the crime of which the probationer or defendant was convicted or pleaded nolo contendere.’” *Johnson v. State*, 247 Md. App. 170, 184 (2020) (quoting CP § 6-223(d)(2)).<sup>2</sup> The JRA, however, “placed presumptive limits on the duration of incarceration that may be imposed for a ‘technical’ violation of probation.” *Id.* (citations omitted). “If a probationer commits a technical violation of probation, the court may revoke the probation granted or the suspension of sentence and ‘impose a period of incarceration of: (1) not more than 15 days for a first technical violation; (2) not more than 30 days for a second technical violation; and (3) not more than 45 days for a third technical violation[.]’” *Id.* (quoting CP § 6-223(d)(2)(i)).<sup>3</sup> But “for a fourth or subsequent technical violation or a violation that is not a technical

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<sup>2</sup> Unless otherwise indicated, all statutory references throughout this opinion are to the JRA, as amended.

<sup>3</sup> “There is a rebuttable presumption that the limits on the period of incarceration that may be imposed for a technical violation . . . are applicable.” CP § 6-223(e)(1). That presumption may be rebutted under the conditions set forth in subsection (e)(2). Because the court, in the instant case, found that Mr. Crockett had committed a non-technical violation, it made no findings pursuant to subsection (e)(2).

violation,” the court may “impose any sentence that might have originally been imposed for the crime of which the probationer or defendant was convicted or pleaded nolo contendere.” CP § 6-223(d)(2)(ii).

A “technical violation” of probation is defined in section 6-101(m) of the Correctional Services Article of the Maryland Annotated Code (1999, 2017 Repl. Vol.) as “a violation of a condition of probation . . . that does not involve: (1) an arrest or a summons issued by a commissioner on a statement of charges filed by a law enforcement officer; (2) a violation of a criminal prohibition other than a minor traffic offense; (3) a violation of a no-contact or stay-away order; or (4) absconding.”<sup>4</sup>

In *Brendoff v. State*, 242 Md. App. 90 (2019), we considered what must be proven to conclude that a defendant committed the non-technical violation of absconding. We held that for a court to conclude that a defendant absconded, it “must find, on the record,” that he “willfully evaded the supervision” of the Division of Parole and Probation, “not merely that he left the treatment facility.” *Id.* at 122.

Applying that holding to the instant case, we conclude that the circuit court erred in finding that Mr. Crockett had committed the non-technical violation of absconding, based upon no more than his admission that he had failed to complete the Drug Court Program. As for the State’s contention that the court was “right for the wrong reason” because it could properly find that Mr. Crockett had committed four technical violations of probation

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<sup>4</sup> The same definition is incorporated by reference in the Criminal Procedure Article. *See* CP § 1-101(q).

and sentence him under CP § 6-223(d)(2)(ii), we note that Mr. Crockett was never charged with any previous violations, technical or otherwise. We reject the State’s argument, therefore, because the circuit court could not have found that Mr. Crockett had committed other uncharged violations of probation. *See* Md. Rule 4-347(a), (b).

**JUDGMENTS OF THE CIRCUIT COURT  
FOR CECIL COUNTY REVERSED.  
COSTS TO BE PAID BY CECIL COUNTY.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0276s20cn.pdf>