

Circuit Court for Kent County  
Case No.: 14-K-10-007759

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 571

September Term, 2023

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DEREK JAMES WRIGHT

v.

STATE OF MARYLAND

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Graeff,  
Arthur,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kenney, J.

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Filed: June 4, 2024

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On July 8, 2011, Derek James Wright, appellant, was convicted of second-degree arson in the Circuit Court for Kent County and sentenced to fifteen years’ imprisonment with all but five years suspended in favor of five years’ probation. That period of probation began on January 5, 2014. On March 30, 2016, the Division of Parole and Probation (DPP) petitioned for a warrant alleging that appellant was in violation of the terms of his probation, which the circuit court granted on April 1, 2016. That warrant was served on appellant on June 21, 2022, over six years later.<sup>1</sup>

On December 1, 2022, the circuit court held a violation of probation (VOP) hearing. At the outset of that hearing, appellant moved to dismiss the case based on the “inordinate” delay in the prosecution of the violation of probation proceedings.<sup>2</sup> After the circuit court denied the motion, the violation of probation hearing proceeded and appellant was found to be in violation of the terms of his probation as the result of a new conviction while on probation and not undergoing a psychological and substance abuse evaluation. In the court’s view, he absconded from supervision by never fully coming under supervision and the Maryland VOP warrant precluded a transfer of probation to Delaware.

We granted appellant’s application for leave to appeal from the violation of probation proceedings and transferred the case to our regular appellate docket. On appeal, appellant presents one question:

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<sup>1</sup> The record reflects that appellant was served with the outstanding warrant when he was stopped for operating an unregistered moped in Maryland.

<sup>2</sup> If appellant filed a written motion, it does not appear in the available record and it has not been brought to our attention.

Did the lower court err or abuse its discretion in denying [appellant’s] Motion to Dismiss for inordinate delay?

In our consideration of the question presented on appeal, we confine ourselves to the record of the hearing related to the motion to dismiss as it was all that was before the court at the time the motion was ruled on. For the reasons explained below, we answer that question in the negative.

## DISCUSSION

### *The Motion to Dismiss*

Near the outset of the December 1, 2022 violation of probation hearing, appellant’s counsel said: “Preliminarily we have a, we would make a motion to dismiss based on an inordinate amount of time for service and the conduct of this hearing, Your Honor.” Appellant’s counsel confirmed that the motion to dismiss was based on this Court’s decision in *Beach v. State*, 75 Md. App. 431 (1988). The foregoing represents the sum total of appellant’s argument on the motion to dismiss with no proffer or statement of facts that might support it.

The State responded, in general terms, that, even if appellant could show an unreasonable delay in prosecuting the VOP proceedings, he had not demonstrated any prejudice from the delay which, according to the State, is required by *State v. Berry*, 287 Md. 491 (1980) and *Boone v. State*, 55 Md. App. 663 (1983).

The court and the State then discussed the timeline relevant to appellant’s VOP proceedings: the VOP warrant “went out” on April 1, 2016 based on appellant’s “absconding” due to his failure to report to his probation agent. The court noted that a

“Supplemental Report” issued on August 11, 2016 had alleged other violations of probation. The court then denied the motion to dismiss, stating:

So there was a request for a warrant. That warrant was outstanding for about six years. Which would seem to confirm the fact that [appellant] wasn't appearing. And so, it would seem to the Court that any delay in proceedings is almost entirely on [appellant] in that he absconded from supervision, allegedly, and the Court, and the State could not bring him in for consideration of a violation of probation until now, he actually was brought in a little bit earlier, but there was a request for a continuance for recusal.

So the motion to dismiss is denied. All right. So what do you want to do now?

In response to the court's inquiry, appellant asked to proceed with a VOP hearing. During that hearing, appellant's probation agent and appellant were called as witnesses and more details concerning appellant's probation were revealed. When appellant was released from incarceration in Maryland on January 5, 2014, he was transferred to Delaware to serve an outstanding sentence there. He was released in Delaware sometime in early 2015.

Although the court issued a VOP warrant on April 1, 2016, appellant's probation agent was not yet aware that it had been issued at the time of appellant's first, and only, in-person meeting with the agent on April 6, 2016. The agent testified that, during that meeting, he explained that appellant needed to continue reporting to him by mail even though they had filled out paperwork to transfer his probation to Delaware. The agent said that appellant reported to him by mail once in April 2016 and never contacted him again. During that one meeting, appellant disclosed to the agent that he had been arrested on new criminal charges in Delaware about a week earlier, but he never told the agent about his subsequent conviction on those charges, or disclosed another set of criminal charges

resulting in a conviction. To the agent’s knowledge, with the exception of a few days, appellant was not incarcerated in Delaware from 2016 to 2019 and should have been reporting to the agent. He completed a term of probation in Delaware during his Maryland probation period.

Appellant testified that he consistently reported to his Delaware probation agent, which he thought was sufficient to satisfy his Maryland probation. He also stated that he was homeless for a time while on probation.

In closing, the State argued that it believed that appellant knew he was supposed to report to his agent in Maryland until he heard differently, and although appellant’s housing issue could have caused difficulty in receiving mail, he could still send mail. The State urged the court to find appellant in violation of the conditions of his probation and that appellant’s subsequent convictions in Delaware while on probation in Maryland supported doing so.

Appellant did not contest the criminal convictions, but he maintained that he was uncertain about reporting to his Maryland probation agent. Because he had filled out paperwork with his Maryland probation agent to transfer his probation to Delaware, he assumed that reporting in Delaware was sufficient.

As stated earlier, the court found appellant to have been in violation of the terms of his probation.

#### *Appellate Contentions*

On appeal, appellant contends that the VOP court erred in denying his motion to dismiss and that this Court should order the VOP court to dismiss any violations of

probation claims or, in the alternative, remand the case to the VOP court to follow the procedure outlined in *Beach, supra*, when dealing with claims of dilatory prosecution of VOP proceedings.

Based on the limited record created on the motion to dismiss, the State contends that appellant’s arguments on appeal are not adequately preserved for our review, and that the VOP court did not err or abuse its discretion in denying appellant’s motion to dismiss.

*Analysis*

In *State v. Berry*, 287 Md. at 489-99, the Supreme Court of Maryland held that a revocation of probation hearing may be conducted at any time, including when the probationary period has expired. But it cautioned that its holding was “not intended to imply that the [S]tate is relieved of its obligation to initiate and consummate such hearings diligently and promptly” because a “probationer is entitled to a fair hearing where he can confront his accusers and present his defense[.]” *Id.* at 499. To meet that obligation, the Court stated that:

[A]t a minimum, the State should make reasonable efforts to initiate the proceedings and to locate and serve the defendant with process so as to bring him to trial promptly. On the other hand, we think the trial court should consider the availability of the defendant to receive such process and the extent to which he has made his presence known in the community in which he lives.

*Id.* at 500.

This Court in *Beach v. State*, 75 Md. App. at 439-41, in applying the *Berry* analysis, did provide a procedural approach to a claim that the State failed to prosecute VOP proceedings diligently and promptly. The initial burden is on the State to explain its efforts

to locate and serve the probationer. If that explanation does not establish a prima facie case that its efforts were reasonable under the circumstances, the State has not met its obligations under *Berry*. But when the State’s explanation does establish a prima facie case that its efforts were, in fact, reasonable, the burden shifts to the probationer “to support his motion by showing that he was, in fact, available for service and that he was not concealing himself or engaged in avoiding detection and service.” *Id.* at 441.

As the *Beach* panel commented:

It goes without saying that the court can hardly consider these factors if no evidence pertaining to them is presented. How can it determine whether the State has made reasonable efforts to locate and serve the defendant if there is no evidence of the efforts it made? How can it determine whether the defendant has been available for service if there is no evidence of where he was (or even where he wasn’t)?

*Id.* at 440. There, the case was remanded to the VOP court to conduct a hearing as outlined in that opinion. *Id.* at 441-42.

In *Boone v. State*, 55 Md. App. 663 (1983), this Court, relying on *Berry*, determined that probationers who claim that the State had not met its obligation to diligently and promptly prosecute VOP proceedings also needed to show that they were prejudiced by the State’s inaction. *Id.* at 670. In that case, we further determined that the probationer, who was incarcerated for two months, had suffered prejudice “from anxiety and oppressive incarceration, even though his defense was not impaired” as a result of the State’s delay in initiating the VOP proceedings. *Id.* at 671.

We are persuaded on this record that appellant failed to preserve his lone claim on appeal. Appellant offered very little in support his motion to dismiss when the issue was

squarely before the court even though he was aware and had the benefit of *Beach*. He did not seek to offer evidence on the motion to dismiss or indicate that the court was not properly proceeding on the motion under the *Beach* approach. He did not argue that the State had failed to meet its burden to show its efforts to prosecute the VOP proceedings were reasonable. He never asked the circuit court for an opportunity to show that he had been available for service and he never suggested that he suffered any prejudice by the delay in VOP proceedings. Nor did he ask the court to revisit or reconsider its ruling on the motion to dismiss based on anything revealed during the violation of probation hearing. In short, we perceive neither error nor an abuse of discretion in the denial of the motion to dismiss.<sup>3</sup>

We therefore affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT  
COURT FOR KENT COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**

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<sup>3</sup> Nothing in this opinion should be read to preclude appellant's ability to pursue any otherwise collateral relief that may be available to him.