IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
August 26, 2008 Session

STATE OF TENNESSEE v. CURTIS ANTHONY BRYSON

Direct Appeal from the Criminal Court for Hamilton County
No. 236896 Don W. Poole, Judge

No. E2007-02374-CCA-R3-CD

The Defendant, Curtis Anthony Bryson, pled guilty to theft over $1,000, a Class D felony, and the trial court ordered him to serve three years of supervised probation. Prior to the revocation at issue, the trial court revoked the Defendant's probation three times, resulting in an expiration date of January 28, 2006, for the Defendant's probated sentence. On January 12, 2006, the trial court ordered that a *capias* issue for the Defendant's arrest. The same order listed seven grounds upon which the Defendant had violated his probation, and provided that a copy of the order be attached "to the Process to be served on the defendant." However, no further proceedings to revoke the Defendant's probation occurred until August 2007, at which time a duplicate *capias* for the Defendant's arrest was issued and executed. In September 2007, after conducting a hearing, the trial court found that the Defendant had violated his probation and ordered him to serve the remainder of his sentence in the Tennessee Department of Correction. It is from this judgment that the Defendant now appeals. After reviewing the record, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and J.C. MCLIN, JJ., joined.

Ardena J. Garth (at trial), Chattanooga, Tennessee, and Donna Robinson Miller (on appeal), Chattanooga, Tennessee, for the Appellant, Curtis Anthony Bryson.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Jennifer L. Bledsoe, Assistant Attorney General; William H. Cox, III, District Attorney General; Brian Chapuran, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Procedural History

On June 29, 2001, the Defendant pled guilty to one count of theft over $1,000, a Class D

felony. The trial court placed the Defendant on supervised probation for three years. The Defendant subsequently violated his probation at least three times, leading the trial court to revoke his probation on three separate occasions, each time ordering a term of imprisonment followed by an alternative sentence. As a result of these interim periods of incarceration, the expiration of the probationary period extended to January 28, 2006.

On January 12, 2006, the trial court ordered that a *capias* issue for the Defendant's arrest, for violating probation. In the order, the trial court specified the probation conditions the Defendant was alleged to have violated:

> This Court has received a Probation Violation Report...alleging the following probation [violations] since being placed on Probation:
> 1) New arrests;
> 2) Failure to report new arrests;
> 3) Change of residence without permission;
> 4) Absconded;
> 5) Failure of drug tests;
> 6) Failure to pay fees;
> 7) Failure to comply with special conditions of intensive probation.

Further, the order provided that a copy of the order be attached "to the Process to be served on the defendant." In August 2007, the trial court issued a duplicate *capias* for the Defendant's arrest, which was shortly thereafter executed. The following month, the trial court held a revocation hearing wherein it revoked the Defendant's probation and ordered the Defendant to serve the remainder of his sentence in incarceration. It is from this judgment that the Defendant now appeals.

II. Analysis

On appeal, the Defendant contends that the trial court lacked jurisdiction to revoke his probation because proceedings to revoke probation were not initiated before the probation term expired. The State answers that the *capias* filed during the probation period tolled the expiration of the probation period. Under the facts and circumstances of this case, we agree with the State.

The Tennessee Code authorizes trial courts to exercise authority over suspended sentences "at any time within the maximum time which was directed and ordered by the court for such suspension." T.C.A. § 40-35-310 (2008). However, the initiation of revocation proceedings within the term of a suspended sentence tolls any limitation of the time within which to revoke probation. *State v. Lewis*, 917 S.W.2d 251, 256 (Tenn. Crim. App. 1995) (citing *McGuire v. State*, 292 S.W.2d 190 (1956); and *State v. Carden*, 653 S.W.2d 753 (Tenn. Crim. App. 1983)). At issue in this case is whether the *capias* issued by the trial court within the probation period was sufficient to toll the period's expiration. Black's Law Dictionary defines a *capias* as "[a]ny of various types of writs that require an officer to take a named defendant into custody. A *capias* is often issued when a respondent fails to appear . . . ." BLACK'S LAW DICTIONARY (8th ed. 2004) (Westlaw).

This Court has not previously decided whether a *capias* tolls the limitations period in which a trial court may revoke probation. However, we have concluded that neither a petition to revoke probation nor a probation violation report is sufficient to toll a probation period. *See State v. Anthony*, 109 S.W.3d 377, 381-82 (Tenn. Crim. App. 2001) (holding that a probation violation report does not toll a limitation period); *and see State v. Shad Tankersley*, No. W2005-02901-CCA-R3-CD, 2007 WL 1259212, at *4 (Tenn. Crim. App., at Jackson, Apr. 30, 2007) (holding that a petition to revoke probation does not toll a limitation period), *no Tenn. R. App. P. 11 application filed*.

In both *State v. Anthony* and *State v. Tankersley*, we relied on the Tennessee Code's language authorizing a trial court to issue an arrest warrant for a probation violator. *Anthony*, 109 S.W.3d at 381-82; *Tankersley*, 2007 WL 1259212, at *4. The Code provides that "whenever it comes to the attention of the trial judge that any defendant . . . has violated the conditions of probation, the trial judge shall have power to cause to be issued . . . a warrant for the arrest of such defendant as in any other criminal case." T.C.A. § 40-35-311(a) (2008). Therefore, it is the "clear intention of the legislature . . . to require the issuance of a warrant for the arrest of a defendant who has committed a probation violation in order to initiate procedure to revoke probation." *Tankersley*, 2007 WL 1249212, at *3. The filing of a petition for revocation, a motion for revocation, or a probation violation report, without the trial judge issuing a warrant based upon the allegations in such filings, does not toll a probation period. In our view, to allow such a tolling, without the exercise of the power of the trial court to issue a warrant, would be contrary to legislative intent.

In *State v. Byrd* we held that a *capias* not clearly citing a probation violation does not toll a probation period. *State v. Kenneth Michael Byrd*, No. E2002-01589-CCA-R3-CD, 2003 WL 21047130 (Tenn. Crim. App., at Knoxville, May 9, 2003), *no Tenn. R. App. P. 11 application filed*. In *Byrd*, the trial court issued a *capias* for the arrest of a defendant who was subsequently charged with three crimes, one of which was a violation of probation. *Id.* at *1. However, neither the *capias* nor any document attached thereto specified the reason for the arrest. *Id.* Therefore, it was not clear that the *capias* was based on the defendant's violation of his probation. We concluded that although "there may be occasions where" an arrest warrant and *capias* are synonymous, they are not synonymous where the *capias* does not clearly state the reason for the arrest. *Id.* at *2. The *capias* at issue in that case was insufficient to toll the statute, and this Court stated that "[w]hether a *capias* issued for the purpose of arresting a probation violator tolls the expiration of a probation sentence will have to be answered another day, because the record before us inconclusive as to the reason why the *capias* was issued." *Id.* at *1.

Accordingly, we conclude today as a matter of first impression that a *capias* issued for the purpose of arresting a probation violator does toll the expiration of a probation sentence where the *capias* both identifies the probation violation as the reason for the arrest and is filed within the probation period. For purposes of tolling a statute of limitation, the objective of a warrant is to establish that before the expiration of the probation period, a judge having jurisdiction to revoke a defendant's probation ordered a defendant's arrest and identified the defendant's alleged violation of probation as the reason for the arrest. Where the issuance of a *capias* accomplishes this objective, its effect is identical to that of an arrest warrant.

In our view, the issuance of an arrest warrant for an alleged violation of probation is a judicial function. A *capias* that cites the probation violation, unlike a probation violation report or a petition to revoke probation, requires a judge's order of arrest and cites the probation violation. We conclude that a *capias* issued by a judge within the probation period and clearly identifying the defendant's probation violation as the reason for arrest tolls the expiration of the probation period. This conclusion is in keeping with our previous decisions and the clear language of the Tennessee Code.

In the case under submission, the trial court revoked the Defendant's probation under a proper exercise of its jurisdiction. On January 12, 2006, the trial court issued a *capias* clearly identifying the Defendant's probation violation as the reason for the arrest, and the copy of the order requiring that the *capias* issue, to be attached to the *capias*, listed the specific conditions alleged to have been violated. Therefore, the *capias* issued by the trial court had the same effect as that of a probation violation warrant: it tolled the expiration of the probation period. Consequently, in August 2007, the trial court rightfully exercised jurisdiction to revoke the Defendant's probation and order the Defendant to serve the remainder of his sentence in incarceration. Accordingly, we affirm the judgment of the trial court.

III. Conclusion

After a thorough review of the record and applicable authorities, we conclude that the trial court revoked the Defendant's probation under a proper exercise of its jurisdiction. We affirm the judgment of the trial court.

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ROBERT W. WEDEMEYER