

CASENOTES REGARDING PROBATION REVOCATIONS

1. HEARSAY

Hearsay is admissible but cannot be the sole basis for revocation. A new arrest is not a sufficient basis for revocation. *Mitchell v. State*, 462 So. 2d 740 (Ala.Cr.App.1984)

“The use of hearsay as the sole means of proving a violation of a condition of probation denies a probationer the right to confront and to cross-examine the persons originating information that forms the basis of the revocation.” ’ *Goodgain v. State*, 755 So.2d at 592 (quoting *Clayton v. State*, 669 So.2d 220, 222 (Ala.Crim.App.1995)).

2. FAILURE TO PAY ALLEGATIONS

" [W]here payment of court costs and supervision fees is made a condition of probation, a defendant's probation may not be revoked because of his failure to pay without the court's finding, supported by the evidence, that the defendant willfully refused to pay; that he failed to make sufficient bona fide efforts to pay; or, in the event of a showing of sufficient efforts to pay, that alternate measures to punish and deter are inadequate.”

Snipes v. State, 521 So.2d 89, 90 (Ala.Crim.App.1986)

3. IS UNDERLYING SENTENCE ILLEGAL?

A defendant cannot receive straight probation on a sentence greater than 15 years. On a 15-20 year sentence, there's no no straight probation but a court may order a 3-5 year split §15-18-8 ALA.CODE (1975)

Probation may not be granted for a criminal sex offense involving a child as defined in Section 15-20-21(5) , which constitutes a Class A or B felony. §15-18-8(b)

Firearm enhancements are mandatory. See *Simmons v. State*, 675 So.2d 79, 81 (Ala.Crim.App.1995)(holding that the application of the firearm enhancement statute is mandatory and that "[t]he court has no choice but to obey this statute when a firearm is used to commit a felony");

4. HAS PROBATION EXPIRED?

“The period of probation or suspension of execution of sentence shall be determined by the court, and the period of probation or suspension may be continued, extended, or terminated. However, in **no case shall the maximum probation period of a defendant guilty of a misdemeanor exceed two years, nor shall the maximum probation period of a defendant guilty of a felony exceed five years.** When the conditions of probation or suspension of sentence are fulfilled, the court shall, by order duly entered on its minutes, discharge the defendant. (§15-22-54)

- This restriction does not apply to terms of probation ordered under the Split Sentence Act.

5. TECHNICAL VIOLATOR STATUS

An eligible offender accused of an administrative violation may qualify as a “technical violator” and be subject to a 90-day -maximum term of revocation if the following criteria are met:

ELIGIBLE OFFENDER. A nonviolent offender meeting all of the following criteria:

- a. Serving a probationary sentence who has committed an administrative violation only.
 - b. Who has no pending criminal charges.
 - c. Has no convictions for a new offense since the time the offender was placed on probation.
 - d. Has not on two or more previous occasions been found by a court to be in violation of any condition of the current probation.
- (3) NEW OFFENSE. Any misdemeanor or felony, whether in violation of state or federal law except for minor misdemeanor traffic offenses.
 - (4) NONVIOLENT OFFENDER. A person who has not been convicted at any time of any crime defined in subdivision (13) of Section **12-25-32** and who is not currently on probation for a crime the court finds involved actual or attempted physical harm or injury to any person.

§15-22-54, ALA.CODE (1975)

6. DUE PROCESS REQUIREMENTS

- a. Written notice of the claimed violation of probation

- b. Disclosure to probationer of evidence against him.
- c. Opportunity to be heard in person and to present witnesses and documentary evidence.
- d. The right to confront and cross-examine adverse witnesses.
- e. A written statement by the judge as to evidence relied on and reasons for revoking probation.
- f. In certain cases, the right to counsel.

Armstrong v. State, 312 So.2d 620 (Ala. 1975)

7. ISSUES WHICH MAY BE RAISED REGARDLESS OF PRESERVATION

- a. An adequate written order of revocation;
- b. The requirement that a hearing actually be held;
- c. A trial court's failure to advise defendant of his right to counsel; Evans. v. State, 794 So.2d 1234, 1236 (Ala.Crim.App.2000)
- d. A trial court's failure to appoint counsel to represent the defendant during probation-revocation proceedings. Powell v. State. 140 SO.3d 487, 489-90 (Ala.Crim.App.2013)