

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State v. Hosby, 220 W. Va. 560

648 S.E.2d 66 (2007) · No. No. 33247 · Decided June 7, 2007

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the revocation of James K. Hosby's probation following his misdemeanor conviction for failure to pay child support. The court held that, regardless of whether his failure to pay the arrearage was contumacious, his admitted failures to report to his probation officer and comply with other probation conditions supported revocation under West Virginia Code § 62-12-10. The court also affirmed the order requiring him to serve the remainder of his one-year sentence.

CASE DETAILS

|                       |                                                                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                        |
| WRITING FOR THE COURT | Per Curiam                                                                                                                                                                                                       |
| JURISDICTION          | West Virginia                                                                                                                                                                                                    |
| DECIDED               | June 7, 2007                                                                                                                                                                                                     |
| DOCKET                | No. 33247                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Appeal from a final order revoking probation and requiring the defendant to serve the remainder of a suspended one-year jail sentence imposed after his guilty plea to misdemeanor failure to pay child support. |
| STANDARD OF REVIEW    | The probation-revocation decision is reviewed for abuse of discretion, underlying factual findings for clear error, and questions of law and statutory or rule interpretation de novo.                           |
| PRECEDENTIAL VALUE    | Published opinion; precedential                                                                                                                                                                                  |
| PARTIES               | James K. Hosby v. State of West Virginia                                                                                                                                                                         |

TOPICS

- probation
- sentencing
- criminal procedure
- standard of review
- appellate procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by revoking probation based on Hosby's failures to report, make regular child-support and restitution payments, and report his employment status.
2. Whether the circuit court abused its discretion by ordering Hosby to serve the remainder of his suspended one-year sentence.

## HOLDINGS

1. The circuit court did not abuse its discretion by revoking Hosby's probation because the record clearly established that he violated multiple probation conditions, including failing to report to his probation officer and failing to keep the officer informed of his circumstances.
2. The circuit court did not abuse its discretion by ordering Hosby to serve the remainder of his one-year jail sentence.

## KEY QUOTATIONS

*“Probation is a matter of grace and not a matter of right.”* (at 69)

*“Whether or not the appellant's failure to pay the child support arrearage was contumacious, the fact remains that he failed to report to his probation officer and comply with the other terms of his probation.”* (at 70)

## FACTUAL BACKGROUND

Hosby pleaded guilty to misdemeanor failure to pay child support after originally being indicted on two felony counts. His sentence was suspended, and he was placed on five years of probation subject to conditions including regular child-support payments, restitution of \$13,282.14, reporting to his probation officer, and reporting employment status. He admitted violating multiple conditions, although he attributed missed meetings and payment problems partly to caring for his ill mother and other circumstances. The circuit court revoked probation and ordered him to serve the remainder of his one-year jail sentence.

## PROCEDURAL HISTORY

Hosby pleaded guilty to misdemeanor failure to pay child support and received a suspended one-year jail sentence with five years of probation. After his probation officer alleged multiple violations, including failures to report, make child-support and restitution payments, and report employment status, the Circuit Court of Jefferson County revoked probation and ordered Hosby to serve the remainder of his sentence. The Supreme Court of Appeals of West Virginia affirmed.

## DISPOSITION

affirmed

## CASES CITED

- State v. Duke, 200 W. Va. 356, 489 S.E.2d 738 (1997)
- State v. Minor, 176 W. Va. 92, 341 S.E.2d 838 (1986)
- Armstead v. Dale, 170 W. Va. 319, 294 S.E.2d 122 (1982)
- State v. Rose, 156 W. Va. 342, 192 S.E.2d 884 (1972)
- Hensley v. West Virginia Department of Health and Human Resources, 203 W. Va. 456, 461, 508 S.E.2d 616, 621 (1998)
- Gribben v. Kirk, 195 W. Va. 488, 500, 466 S.E.2d 147, 159 (1995)
- Intercity Realty Co. v. Gibson, 154 W. Va. 369, 377, 175 S.E.2d 452, 457 (1970)
- Cales v. Wills, 212 W. Va. 232, 569 S.E.2d 479 (2002)
- State v. Elder, 152 W. Va. 571, 165 S.E.2d 108 (1968)

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