

COURT OF APPEALS OF VIRGINIA

Record No. 0736-25-1

JAYSON MICHAEL WILLIAMS
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Ortiz, Chaney and Frucci

Argued at Virginia Beach, Virginia

Opinion Issued September 29, 2026

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

Scott J. Flax, Judge

Elena Kagan, Assistant Public Defender (Virginia Indigent Defense Commission, on briefs), for appellant.

Brooke I. Hettig, Assistant Attorney General (Jason S. Miyares,¹ Attorney General, on brief), for appellee.

PUBLISHED OPINION BY JUDGE VERNIDA R. CHANEY

Jayson Michael Williams appeals the circuit court’s order revoking his suspended sentence for failure to pay restitution. Williams argues that the circuit court lacked “jurisdiction” to revoke his suspended sentence because the process issued within the time permitted by Code § 19.2-306(B) notified him only of restitution review and contempt proceedings, not that revocation of his suspended sentence was at issue.² Op. Br. 5. For the following reasons, we reverse the portion of the circuit court’s order revoking and resuspending Williams’s previously suspended sentence.

¹ Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

² Because Williams’s assignment of error challenges only the revocation of his suspended sentence, we do not reach the contempt disposition under Code § 19.2-358(E).

BACKGROUND

I. Williams's Sentence and Restitution Review History

In 1996, Williams pleaded guilty to grand larceny. R. 3. The circuit court sentenced him to ten years of incarceration, with all but four months suspended. R. 3. The suspended sentence was conditioned on ten years of good behavior, supervised probation, paying court costs, restitution of \$51,821, and no contact with the victim. R. 4.

Beginning in 1998, Williams was alleged to have violated the conditions of his suspended sentence on multiple occasions.³ R. 5, 16, 18. In 2008, after finding him in violation, the court revoked the suspension, ordered the unserved portion of the sentence executed, and resuspended all but two years. R. 16. The resuspended sentence was conditioned on ten years of good behavior from the date of Williams's release from confinement and supervised probation. R. 16. On March 15, 2011, the court again found Williams in violation of the terms of his suspended sentence, revoked the suspension, ordered the unserved portion of the sentence executed, and resuspended it in full, conditioned upon Williams's good behavior for ten years "from this date."⁴ R. 18.

On May 16, 2014, the circuit court issued a capias indicating that a show cause hearing for nonpayment of restitution was held on May 8, 2014, pursuant to Code § 19.2-358. R. 21.

The capias also noted that Williams had failed to pay the ordered restitution and to inform the

³ In July 1998, Williams's probation officer reported that Williams had absconded from probation. R. 100-01. A capias issued in October 1998 but was not served on Williams until May 2007. R. 103. On July 10, 2007, the circuit court found Williams in violation of the terms of his suspension and continued the matter for further proceedings. R. 5. The 2008 revocation sentencing order recites the July 2007 violation finding and also reflects Williams's conviction for failure to appear for an offense committed on January 30, 2008. R. 16.

⁴ The March 2011 revocation order also required Williams to pay restitution "in accordance with the terms and conditions of the Restitution order entered by the Court." R. 18. It further states that Williams "shall pay costs pursuant to the statute." R. 18.

court of a change of address, in violation of the restitution order and Code § 19.2-354(A). R. 21. On April 12, 2018, the court dismissed the show cause, granted Williams additional time to pay, and entered a new restitution order requiring Williams to pay \$300 per month. R. 22-23.

On November 12, 2021, the circuit court ordered Williams to show cause why he should not be jailed for nonpayment of restitution under Code § 19.2-358 and directed him to appear on December 16, 2021. R. 24. Service was attempted at Williams's last known address, and the court ordered the issuance of a contempt capias because Williams failed to notify the court or the City Treasurer of any change of address. R. 25. The court issued the capias on December 17, 2021. R. 26. The December 17 capias recited that Williams failed to appear at a hearing held on December 16, 2021, pursuant to Code § 19.2-305.1(F), and charged him with "Contempt: Nonpayment of Restitution" under Code § 19.2-358(E). R. 26.

On March 3, 2022, the circuit court held a restitution review hearing pursuant to Code § 19.2-305.1(F)(2). R. 27. Following the hearing, the court modified the terms of the restitution payment and found that Williams had "intentionally and willfully refused to pay." R. 27-28. Consequently, the court ordered Williams confined for 60 days for contempt pursuant to Code § 19.2-358(E). R. 28. The court also set another restitution review hearing for August 18, 2022. R. 29.

II. The March 2023 Capias and Subsequent Revocation Proceedings

On August 18, 2022, the circuit court held a restitution review hearing under Code § 19.2-305.1. R. 31. The court continued the proceeding to March 2, 2023, for "continued review." R. 32. The order dated August 18, 2022, failed to indicate the specific subdivision of Code § 19.2-305.1(F) under which the hearing was conducted, as neither of the two boxes was checked. R. 31. Instead of selecting the disposition to continue the matter "to review the defendant's compliance with the restitution order"—the option on the form indicating that the

“[d]efendant provided a copy of this Order”—the court marked the “Other” box and annotated “Continue to 3-2-23 for continued review.” R. 31-32.

Williams did not appear at the March 2, 2023 hearing, and the court issued a capias for his arrest. R. 33, 220. The capias listed the charge as “Contempt: Nonpayment of Restitution; Code § 19.2-358(E).” R. 220. The reference to Williams’s underlying grand larceny conviction appeared under the heading “Info only for Police Department.” R. 220. Williams was later arrested on May 30, 2024. R. 220.

On July 22, 2024, the Commonwealth petitioned for a show cause under Code § 19.2-305.1(F)(2), stating that although Williams had been arrested on a capias issued under Code § 19.2-358, it intended to proceed under Code § 19.2-305.1(F)(2) and would “seek the revocation of the defendant’s previously suspended sentence.” R. 227-29. That same day, the circuit court entered a show cause order, returnable July 25, 2024, that was subsequently vacated. R. 236. On August 6, 2024, the Commonwealth filed a second petition, again stating that it would seek to revoke Williams’s previously suspended sentence. R. 237-39. The court then issued a show cause order and scheduled a hearing for August 14, 2024. R. 240.

At the August 14, 2024 hearing, Williams argued that the court lacked “jurisdiction” to revoke his suspended sentence because it had not issued process within the statutory period to notify him that he faced revocation.⁵ R. 364, 370-75. The Commonwealth responded that the statutory period was tolled because Williams absconded when he failed to appear at the March 2, 2023 restitution review hearing and remained absent until his arrest on May 30, 2024. R. 378. Williams maintained that he was not subject to good behavior at the time and therefore could not

⁵ Williams specifically argued below that because “[the statute’s time limit] . . . is no longer than 10 years from the date of hearing pursuant to subdivision one or two and a period of probation, or a probation ordered by the court[,]” the circuit court “lost jurisdiction over [Williams’s] original sentencing event.” R. 364, 370-75.

have absconded. R. 378-80. The court found that Williams had absconded, stating, “I think it’s a broader definition of absconding of I’m not showing up where I’m supposed to show up. You can’t find me. And if you can’t find them, then you are held to that part of it.” R. 382. The court continued the hearing to September 4, 2024, for the parties to brief the legal arguments. R. 242.

At the September 4, 2024 hearing, the parties further argued the jurisdictional question. R. 285-313. The court found that it had “jurisdiction” to revoke Williams’s suspended sentence. R. 308-12. That same day, the court found Williams in violation of the terms of his suspended sentence and guilty of contempt for nonpayment of restitution under Code § 19.2-358(E). R. 270. Following a sentencing hearing on March 19, 2025, the court, by order entered April 1, 2025, revoked and resuspended all but six months of the unserved portion of the sentence originally imposed, and sentenced Williams to serve 60 days for contempt. R. 270. The court conditioned the resuspension on supervised probation for a period not to exceed two years from the later of the date of sentencing or Williams’s release from incarceration, contingent on successful completion of the Community Corrections Alternative Program and payment of the remaining restitution balance. R. 270-71.

ANALYSIS

On appeal, Williams argues that the circuit court erred by revoking his suspended sentence because the court did not timely issue process notifying him that he faced revocation under Code § 19.2-306(B).⁶ The Commonwealth responds that Williams received timely notice through ongoing restitution review proceedings under Code § 19.2-305.1. Alternatively, the Commonwealth argues that the limitations period for timely notice was tolled because Williams

⁶ Williams’s assignment of error is based on the statutory notice requirement outlined in Code § 19.2-306(B). He does not raise a due process claim, which we do not consider.

absconded when he failed to appear at the March 2, 2023 restitution review hearing and remained absent until his arrest on May 30, 2024.

We hold that the process issued within the statutory period did not satisfy Code § 19.2-306(B) because it did not notify Williams that revocation was at issue. We further hold that the later revocation-directed process was untimely because Williams’s absence did not automatically extend the statutory period and the circuit court did not extend his period of suspension based on absconding.

I. Standard of Review

On appeal from a revocation proceeding, the circuit court’s “findings of fact and judgment will not be reversed unless there is a clear showing of abuse of discretion.” *Clarke v. Commonwealth*, 60 Va. App. 190, 195 (2012) (quoting *Keselica v. Commonwealth*, 34 Va. App. 31, 35 (2000)). However, we review de novo whether the circuit court had “jurisdiction” to revoke a suspended sentence, as well as any related questions of statutory interpretation. *Johnson v. Johnson*, 72 Va. App. 771, 777 (2021).

“[W]hen interpreting a[] . . . [statute], ‘our primary objective is to “ascertain and give effect to legislative intent,” as expressed by the language used.’” *Corzine v. Alexandria City Council*, 86 Va. App. 623, 630 (2026) (third alteration in original) (quoting *Berry v. Bd. of Supervisors*, 302 Va. 114, 127 (2023)). “[W]e must assume that ‘the legislature chose, with care, the words it used when it enacted the relevant statute.’” *City of Va. Beach v. ESG Enters., Inc.*, 243 Va. 149, 153 (1992) (quoting *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295 (1990)). “As with all issues of statutory interpretation, we are bound by the plain language of the statutes at issue.” *Small v. Fannie Mae*, 286 Va. 119, 127 (2013). We also “examine a statute in its entirety, rather than by isolating particular words or phrases.” *Id.* (quoting *Cummings v. Fulghum*, 261 Va. 73, 77 (2001)). Related statutory provisions should be interpreted “as a

consistent and harmonious whole . . . to effectuate the legislative goal.” *Corzine*, 86 Va. App. at 638 (alteration in original) (quoting *Bd. of Supervisors v. Cohn*, 296 Va. 465, 473 (2018)). Accordingly, we read Code §§ 19.2-305.1, -306, and -358 together and give effect to each provision.

II. Active Jurisdiction and Code § 19.2-306’s Time Limitations

A. *The timing requirement concerns the circuit court’s active jurisdiction.*

As a preliminary matter, although Williams frames his assignment of error in jurisdictional terms, Code § 19.2-306(B)’s timing requirement concerns a circuit court’s active jurisdiction, not subject-matter jurisdiction.⁷ In *Cilwa v. Commonwealth*, 298 Va. 259 (2019), the Supreme Court explained that subject-matter jurisdiction concerns a court’s “power to adjudicate a case” and “refers to a court’s power to adjudicate a class of cases or controversies.” *Id.* at 266 (first quoting *Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church*, 296 Va. 42, 49 (2018); and then quoting *In re Commonwealth*, 278 Va. 1, 11 (2009)).

By contrast, “‘active jurisdiction’—pragmatically called the ‘jurisdiction to err’—involves not the power of the court but the proper exercise of its authority consistent with . . . any applicable ‘mandate of the statute law.’” *Id.* (footnote omitted) (quoting *Farant Inv. Corp. v. Francis*, 138 Va. 417, 427, 436 (1924)). Code § 19.2-306 “govern[s] the procedures for the [circuit] court’s exercise of authority over suspended sentences, probation, and revocation proceedings” and therefore does not “strip a [circuit] court of subject matter jurisdiction if the court violates those procedures.” *Id.* at 269-70.

Since Code § 19.2-306(B)’s timing requirement concerns active jurisdiction, “the parties are free to extend these [statutory] deadlines, with the [circuit] court’s concurrence, even after

⁷ Williams’s assignment of error reads: “The [circuit] court erred by revoking Mr. Williams’s suspended sentence where process was not timely issued to notify Mr. Williams and the [circuit] court lacked jurisdiction.”

their expiration.” *Id.* at 270. Absent such an agreement, however, “a probationer is free to advocate on direct appeal for strict compliance with the statutory time limitations.” *Id.* Here, Williams did not agree to extend the deadline or waive the required notice. Instead, he twice objected below that no timely process had issued to notify him that revocation was at issue. R. 244-57, 285-313, 364, 370-75. The circuit court, therefore, was required to comply with Code § 19.2-306(B).

The remaining question is whether the circuit court properly exercised its active jurisdiction by complying with Code § 19.2-306(B)’s timing and notice requirements. We address the timing requirement first because it identifies which process must satisfy Code § 19.2-306(B)’s notice requirement.

B. *Code § 19.2-306 imposes two distinct time limitations.*

Code § 19.2-306 governs revocation of suspended sentences and probation.⁸ It contains “two time limitations on the revocation of a suspended sentence.” *Cilwa*, 298 Va. at 268.

Subsection (A) first limits the conduct for which a court may revoke a suspended sentence. It provides that, when a court has suspended the execution or imposition of a sentence, “the court may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any time within the probation period, or within the period of suspension fixed by the court.”

Code § 19.2-306(A).

Subsection (B) then limits when the court may proceed on that violation. It provides:

The court may not conduct a hearing to revoke the suspension of sentence unless the court issues process to notify the accused or to

⁸ Code § 19.2-306 (Revocation of suspension of sentence and probation) was amended in 2021 and again in 2022. *See* 2021 Va. Acts Spec. Sess. I, ch. 538; 2022 Va. Acts chs. 569, 570 (effective July 1, 2022). Code § 19.2-305.1 (Restitution for property damage or loss; community service) was last amended in 2021. *See* 2021 Va. Acts Spec. Sess. I chs. 190, 393. The relevant process issued, and the revocation proceedings occurred, after the 2021 and 2022 amendments took effect. Applying the current versions of Code §§ 19.2-305.1 and -306 to those proceedings is therefore prospective, and no question of retroactive effect arises.

compel his appearance before the court within 90 days of receiving notice of the alleged violation or within one year after the expiration of the period of probation or the period of suspension, whichever is sooner, or, in the case of a failure to pay restitution, within three years after such expiration.

Code § 19.2-306(B).

Since the revocation-directed process here was untimely even under the three-year restitution period, we need not decide whether the 90-day provision or the “whichever is sooner” clause imposed an earlier deadline. The restitution-specific three-year period runs from the expiration of the period of probation or suspension, not from the entry or modification of a restitution order. Subsection (B) requires process, “in the case of a failure to pay restitution, within three years *after such expiration*.” Code § 19.2-306(B) (emphasis added). “Such expiration” refers to the immediately preceding “expiration of the period of probation or the period of suspension.” *Id.* Thus, the restitution clause changes the length of the period following that expiration, but it does not substitute a new triggering event or restart the period each time the court reviews restitution or modifies payment terms. Subsection (B) itself demonstrates that the General Assembly used a different trigger when it intended one: the 90-day alternative runs from receipt of notice of the alleged violation.

C. The operative deadline was March 15, 2024.

Here, the operative order for calculating Williams’s suspension period is the 2011 revocation order. In that order, the circuit court revoked Williams’s suspended sentence, resuspended the sentence in full, and conditioned the suspension on Williams’s good behavior for ten years “from this date.” R. 18. The order’s hearing date was March 15, 2011. R. 18. When an order fixes a specific period of good behavior, that period defines the period of suspension. *See Green v. Commonwealth*, 69 Va. App. 99, 103-04 (2018); *Hartless v.*

Commonwealth, 29 Va. App. 172, 175 (1999). Thus, Williams’s suspension expired on March 15, 2021.

Applying the three-year restitution period under Code § 19.2-306(B), and absent a valid extension, March 15, 2024, was the last day on which the circuit court could issue process notifying Williams or compelling his appearance for a revocation hearing. At the September 4, 2024 hearing, the court and the parties treated March 15, 2024, as the operative deadline absent an extension based on absconding. R. 284-85.⁹ Thus, absent a valid extension, the court had to issue the revocation-directed process by March 15, 2024.

III. Code § 19.2-306(B)’s Revocation-Directed Notice Requirement

Having identified the March 15, 2024 deadline, we next consider whether the process issued by that date satisfied Code § 19.2-306(B). Absent such timely notice, the circuit court lacked active jurisdiction to revoke the suspended sentence. *See Cilwa*, 298 Va. at 270.

A. The restitution-review proceedings did not provide revocation-directed notice.

The Commonwealth maintains that Williams received timely notice through the restitution-review proceedings under Code § 19.2-305.1. At the August 18, 2022 restitution-review hearing, Williams appeared with counsel and was current on his payments. R. 285. The court continued the matter to March 2, 2023, for “continued review.” R. 31-32. Code § 19.2-305.1(F) permits a court, upon finding noncompliance with a restitution order, to modify probation under Code § 19.2-304, revoke some or all of a suspended sentence under Code § 19.2-306, or proceed by contempt under Code § 19.2-358(E). The Commonwealth, therefore,

⁹ During the September 4, 2024 hearing, the circuit court stated that if the ten-year good behavior period applied, then “with restitution you get those extra three years,” and defense counsel agreed that, “from a statutory standpoint,” that was “not disputed.” R. 284. The court then stated that “[s]o it only matters whether or not we take it with the absconding. Because . . . the Commonwealth needs, more than [13] years from . . . the March 15th, 2011 order, right?” R. 284-85. The Commonwealth responded, “Yes, sir.” R. 285.

contends that Williams had notice of a restitution-review proceeding in which revocation was one available consequence.

On this record, notice of restitution review alone did not satisfy Code § 19.2-306(B). The plain language of Code § 19.2-306(B) shows that the required process must be directed to revocation. The statute does not speak generally of any process issued in a related proceeding. It provides that the court “may not conduct a hearing to *revoke* the suspension of sentence unless the court issues process to notify the accused or to compel his appearance before the court” within the applicable period. Code § 19.2-306(B) (emphasis added). The phrase “to revoke the suspension of sentence” identifies the hearing for which notice or process is required. The provision is both prohibitory and conditional. The phrase “may not conduct” prohibits the court from holding a revocation hearing, and “unless” identifies the condition that lifts the prohibition—the timely issuance, within the applicable period, of process to notify the accused or to compel his appearance. Thus, issuing that process is a prerequisite to conducting the revocation hearing.

Reading subsection (B) as a whole, its final sentence reinforces that relationship. It provides that “[s]uch notice and service of process may be waived by the defendant, in which case the court may proceed to determine whether the defendant has violated the conditions of suspension.” Code § 19.2-306(B). The phrase “[s]uch notice” refers back to the notice required by the preceding sentence, further connecting the required process to the revocation proceeding.

Thus, to satisfy Code § 19.2-306(B), the process must notify the defendant, or compel his appearance, for a proceeding in which revocation of the suspended sentence is at issue. Nothing in subsection (B) requires a particular form, label, or checked box. That reading accords with how this Court has long described the notice that must precede a revocation. *See Copeland v. Commonwealth*, 14 Va. App. 754, 756 (1992) (reversing, on due process grounds, where

“Copeland received no notice that the [circuit] court would consider revocation of his suspended sentence”).

Code § 19.2-305.1 does not displace the requirement that process be directed to revocation. Code § 19.2-305.1(F)(2) provides in relevant part:

If at the hearing the court finds that the defendant is not in compliance with the restitution order, the court may (i) modify the period or terms of probation pursuant to § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (iii) proceed in accordance with the provisions of subsection E of § 19.2-358.

Subdivision (F)(3) makes the same options available at each subsequent compliance review. That language sets forth the court’s range of available options when a defendant is not in compliance with a restitution order; it does not require the court to employ any of them, including revocation.

Code § 19.2-305.1(G) confirms that distinction. Before probation is revoked or a suspended sentence is imposed, “[a] hearing shall be held in accordance with the provisions of this Code relating to revocation of probation or imposition of a suspended sentence before either such action is taken.” Code § 19.2-305.1(G). That language preserves, rather than displaces, the revocation procedures in Code § 19.2-306, including Code § 19.2-306(B)’s requirement that process be timely issued before the court conducts a revocation hearing. Thus, Code § 19.2-305.1 may permit continued restitution-compliance review, but it does not independently authorize the court to impose suspended incarceration time without complying with the revocation procedures incorporated by subsection (G).

That conclusion follows from the statutory scheme. Reading subsection (F)’s reference to revocation as itself satisfying subsection (G)’s separate command that the court proceed “in accordance with” the revocation provisions would render subsection (G) superfluous. We avoid such a reading because it would isolate one phrase in subsection (F) while failing to give effect

to the statute as a whole. *See, e.g., May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 14 (2019) (reading a statute “in its entirety” and as “a consistent and harmonious whole,” while presuming that every part has effect (quoting *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425 (2012))); *Davis v. MKR Dev., LLC*, 295 Va. 488, 494 (2018) (stating that courts “ordinarily resist a construction of a statute that would render part of a statute superfluous”).

Code § 19.2-305.1(F) allows the court to modify probation, revoke under Code § 19.2-306, or proceed by contempt under Code § 19.2-358(E). Contempt under Code § 19.2-358(E) permits confinement “as for contempt” for up to 60 days. Revocation under Code § 19.2-306 permits the court to impose suspended incarceration time. Treating notice of any restitution-review hearing as automatic notice of revocation would erase that distinction for notice purposes, despite Code § 19.2-305.1(G)’s express instruction that revocation must occur in accordance with the code provisions governing revocation.

The circuit court reasoned that it had “been operating in this matter under 305.1” and that the Commonwealth therefore remained within its window even though the ten-year good behavior period had passed. R. 309. However, Code § 19.2-305.1(F)(3)’s timeframe governs how long the court must “follow the procedures set forth in this subdivision for the purpose of reviewing compliance with a restitution order.” It governs the duration of restitution-compliance review but does not alter Code § 19.2-306(B)’s separate deadline for issuing process before a revocation hearing. Subsection (G) confirms that distinction by requiring a revocation to proceed “in accordance” with the code provisions governing revocation. Code § 19.2-305.1(G).

Here, the process issued before March 15, 2024, did not notify Williams that revocation was at issue. The August 18, 2022 order continued the matter to March 2, 2023, for “continued review” of restitution, but it did not state that the court intended to conduct a revocation hearing. R. 31-32. The form order contained a separate revocation box stating, “[t]he Court intends to

proceed to revoke some or all of the suspended sentence pursuant to § 19.2-306,” but that revocation box was left unchecked. R. 31. When Williams failed to appear at the March 2, 2023 hearing, the resulting capias listed the charge as “Contempt: Nonpayment of Restitution; Code § 19.2-358(E).” R. 220. It did not state that Williams was charged with violating the terms of his suspended sentence, that the court intended to proceed under Code § 19.2-306, or that Williams faced revocation of his suspended sentence. R. 220. The order entered that day directed a capias to issue under Code § 19.2-358(A) and Code § 19.2-354(A), and identified the ground as nonpayment of restitution. R. 233.

The Commonwealth acknowledged that distinction below, stating “while we didn’t issue process for a 306 violation, we did issue process for fail[ure] to pay restitution within that window.” R. 371. The Commonwealth also acknowledged that “[i]t was a 358 capias rather than a 306 capias that was issued,” but added that it had at least “noticed the defense that we were trying to compel his appearance in court.” R. 371. Those acknowledgments confirm that the timely capias was directed to contempt for nonpayment of restitution, not revocation of Williams’s suspended sentence.

That the capias also compelled Williams’s appearance does not change the analysis. Subsection (B) conditions a single act on the timely issuance of process—conducting “a hearing to revoke the suspension of sentence.” Code § 19.2-306(B). Both of its alternatives—notifying the accused and compelling his appearance—describe the process that must issue before the court may conduct that hearing. Process that compels a defendant’s appearance for a contempt proceeding, therefore, does not satisfy subsection (B) merely because it brings him before the court.

The subsequent petition and show cause order reaffirm the same point. Following Williams’s arrest under the Code § 19.2-358(E) capias, the Commonwealth filed a petition

pursuant to Code § 19.2-305.1(F)(2). It stated that, although Williams had been arrested on a capias under Code § 19.2-358, it “intend[ed] to proceed under § 19.2-305.1(F)(2) for Fail[ure] to Pay Restitution” and would “seek the revocation of the defendant’s previously suspended sentence.” R. 228-29, 238-39. The court then issued a show cause order under Code § 19.2-305.1(F)(2). R. 240. However, these events occurred after the March 15, 2024 statutory deadline for timely process.

B. *The Commonwealth’s remaining grounds do not establish compliance with Code § 19.2-306(B).*

Berry v. Commonwealth, 200 Va. 495 (1959), does not resolve the question. *Berry* construed a predecessor statute that permitted the court to revoke a suspended sentence and “cause the defendant to be arrested and brought before the court” within the probation period. 200 Va. at 497, 499. Since *Berry* was already in the custody and presence of the court, the Supreme Court held that “there was consequently no need for any process of arrest to bring him before the court.” *Id.* at 500.

This case is distinguishable from *Berry*. Williams contends that the process issued within the statutory period did not notify him that revocation was at issue. Unlike the predecessor statute in *Berry*, the current Code § 19.2-306(B) expressly provides that the court may not conduct a revocation hearing unless it issues process “to notify the accused or to compel his appearance before the court” within the applicable period. Thus, even assuming *Berry* establishes that no additional process was necessary to compel Williams’s appearance once he was before the court, it does not resolve whether the process timely issued here notified him that revocation was at issue. The timely process identified restitution review or contempt, rather than revocation. *Berry*, therefore, does not establish that such process satisfies Code § 19.2-306(B)’s revocation notice requirement. *Price v. Commonwealth*, 51 Va. App. 443, 447 (2008), is not to

the contrary. There, at the outset, the process was directed to revocation of the suspended sentence because the capias was for an alleged probation violation. *Id.* at 446-47.

The circuit court also relied on Code § 19.2-303, ruling that “based upon 303, 305.1 and 306,” it had “the option to sentence him.” R. 312. Code § 19.2-303 provides that “[t]he limitation on the period of probation shall not apply to the extent that an additional period of probation is necessary . . . (ii) if a defendant owes restitution and is still subject to restitution compliance review hearings in accordance with § 19.2-305.1.” By its terms, that provision addresses the permissible length of probation; it does not alter Code § 19.2-306(B)’s separate deadline for issuing process before a revocation hearing. Code § 19.2-303, therefore, does not supply an alternative basis for the revocation here.

C. Recent decisions of this Court support the revocation-directed notice requirement.

Our conclusion rests on the plain language of the statutory scheme, and it is consistent with recent unpublished decisions of this Court addressing similar notice defects.¹⁰

Hairston v. Commonwealth, No. 1322-24-3, 2025 Va. App. LEXIS 693 (Nov. 5, 2025), is persuasive.¹¹ There, this Court held that, to satisfy Code § 19.2-306(B), “the capias or other process issued needed to be ‘directed to the revocation issue,’ and inform her that the [circuit] court ‘would consider revocation of [her] suspended sentence.’” *Id.*, slip op. at 9, 2025 Va. App. LEXIS 693, at *13 (citations omitted). This Court explained that once the court receives notice

¹⁰ Although not binding precedent, unpublished dispositions may be cited as informative. Rule 5A:1(f).

¹¹ *Hairston* was decided after the parties completed briefing. The Supreme Court refused the Commonwealth’s petition for appeal. Before oral argument, this Court directed the parties to be prepared to address whether *Hairston* “has persuasive value on the issues presented in this case, including the interpretation of Code § 19.2-306(B), and the effect of the change in the language of Code § 19.2-306(C) on an ‘automatic extension’ of the notice period for ‘absconding.’” Williams filed a letter of supplemental authority addressing *Hairston*, and both parties addressed it at oral argument.

of the alleged violation, it must timely “issue process” that “notif[ies] the accused” that the court intends to “conduct a hearing to revoke the suspension of sentence.” *Id.*, slip op. at 6, 2025 Va. App. LEXIS 693, at *9 (quoting Code § 19.2-306(B)). It added that the “notice and service” required by Code § 19.2-306(B) must be completed or waived before the court may determine whether the defendant violated the conditions of suspension. *Id.*

In *Hairston*, a capias notifying the defendant of a contempt charge was insufficient because it did not advise her that the Commonwealth sought revocation of her suspended sentence. *Id.*, slip op. at 9, 2025 Va. App. LEXIS 693, at *13. Here, the March 2023 capias similarly listed the charge as “Contempt: Nonpayment of Restitution; Code § 19.2-358(E).” R. 220. Also, the August 18, 2022 continuance order did not check the box reflecting that the court intended “to proceed to revoke some or all of the suspended sentence pursuant to Code § 19.2-306.” R. 31. Under *Hairston*’s reasoning, neither the March 2023 capias nor the August 2022 continuance order was directed to the revocation issue.¹²

The Commonwealth also points to three court orders entered after Williams’ arrest. R. 225, 226, 235. The first order, entered June 14, 2024, set the matter for trial. R. 225. The

¹² *Wilson-Welch v. Commonwealth*, No. 1079-24-1, 2025 Va. App. LEXIS 85 (Feb. 11, 2025), provides additional support for our conclusion. There, the defendant received notice of a restitution review, while the continuance order left unchecked the box for a “revocation hearing.” *Id.*, slip op. at 7, 2025 Va. App. LEXIS 85, at *10. This Court observed that the defendant had “never received notice that he was accused of violating a condition of his suspended sentence” and reasoned that, “in effect, the order notified Wilson-Welch that he was not having a revocation hearing.” *Id.* Although *Wilson-Welch* resolved the appeal on the separate ground that Code § 19.2-305.1(F)(2) did not apply because Wilson-Welch had not been placed on probation, and thus did not reach the issue of notice, its discussion illustrates the distinction between notice of restitution review and notice that revocation is at issue.

Williams, by contrast, was placed on supervised probation at his original sentencing and has not argued that Code § 19.2-305.1(F) is inapplicable to him; we assume without deciding that it applies. R. 4. Although the form used here is comparable to, rather than identical with, the form in *Wilson-Welch*, its notice discussion reinforces the distinction relevant here; notice of a restitution proceeding does not, without more, notify a defendant that revocation of his suspended sentence is at issue.

second order, entered June 27, 2024, continued the matter to July 25, 2024, for trial and restitution review. R. 226. The third order, entered July 25, 2024, continued the matter to August 14, 2024, for trial and a revocation hearing. R. 235. Since all three orders were entered after March 15, 2024, none supplied timely process under Code § 19.2-306(B).

Accordingly, the process issued before March 15, 2024, failed to place Williams on notice that revocation under Code § 19.2-306 was at issue. The revocation-directed process in the form of the later-filed petition and show cause order was issued after the statutory deadline unless the period was validly extended.

IV. Tolling

The Commonwealth alternatively argues that the limitations period was tolled because Williams became a fugitive or absconded when he failed to appear at the March 2, 2023 restitution review hearing and remained absent until his May 30, 2024 arrest. R. 378. The circuit court found that Williams “absconded.”¹³ R. 382. We recount the circuit court’s finding but do not decide whether Williams’s conduct constituted “abscond[ing] from the jurisdiction of the court” within the meaning of Code § 19.2-306(C). At oral argument, the Commonwealth clarified that it does not contend that Williams’s period of probation or suspension was extended, automatically or otherwise, under Code § 19.2-306(C). It argues instead that Code § 19.2-306(B)’s notice period functions as a statute of limitations governed by the general principles of fugitive tolling.

The statutory scheme does not support importing a general fugitive-tolling rule into Code § 19.2-306(B). Code § 19.2-306(B) requires the court to issue process within the statutory

¹³ Because the tolling theory was not the basis of the circuit court’s ruling, the Commonwealth asks us to consider it under the right-result-for-the-wrong-reason doctrine. *See Banks v. Commonwealth*, 280 Va. 612, 617 (2010). We assume without deciding that the doctrine is available here and reject the argument on its merits.

period; it does not require service within that period. Williams’s absence, therefore, did not prevent the circuit court from preserving its revocation authority by issuing revocation-directed process. The Commonwealth acknowledged below that “[i]t was a 358 capias rather than a 306 capias that was issued.” R. 371. Code § 19.2-306(C) separately addresses absconding by permitting the court to extend the period of probation or suspension upon a finding of absconding.

The Commonwealth further invokes Code § 19.2-8, which provides that nothing in that section applies to “any person fleeing from justice or concealing himself within or without the Commonwealth to avoid arrest.” It acknowledges that the statute limits itself to that section, but urges that we apply the principle it reflects to the limitation period in Code § 19.2-306(B). A’ee Br. 14. We decline to do so. The General Assembly addressed absconding in Code § 19.2-306(C), providing that, upon a finding that a defendant has absconded from the court’s jurisdiction, the court may extend the probation period or suspended sentence for a period not to exceed the length of time that such defendant absconded. Subsection (C) permits the court to extend the period of probation or suspended sentence upon a finding of absconding; it does not provide for automatic tolling of subsection (B)’s notice period.

Nor does subsection (C) itself render the later process timely. Even assuming Williams’s failure to appear constituted “abscond[ing] from the jurisdiction of the court,” subsection (C) provides that the court “*may* extend the period of probation or suspended sentence for a period not to exceed the length of time that such defendant absconded.” Code § 19.2-306(C) (emphasis added). The word “may” is permissive and imports discretion; it does not make an extension automatic. *See Bd. of Supervisors v. State Corp. Comm’n*, 292 Va. 444, 454 (2016) (“[T]he word ‘may’ is prima facie permissive, importing discretion.” (quoting *Small*, 286 Va. at 131)). Thus, a finding of absconding does not itself extend the period of probation or suspension.

The record does not show that the circuit court exercised its statutory authority pursuant to Code § 19.2-306(C) to extend Williams’s period of suspension based on absconding. Instead, the court’s ruling rested on its conclusion that the case remained available under Code § 19.2-305.1 because the matter had proceeded under that section since the March 3, 2022 hearing, the August 2022 order continued the matter for further restitution review, and then Williams failed to appear at the March 2023 review hearing. R. 308-12. The court reasoned that it had “been operating in this matter under 305.1” and that the Commonwealth remained within its window even though the ten-year good behavior period had passed. R. 309. The court stated, “[u]nder 303, I can still carry this time over his head so he has a consequence if he doesn’t pay.” R. 311. That rationale differs from exercising discretionary authority under Code § 19.2-306(C) to extend the period of suspension. The distinction matters because Code § 19.2-306(C) makes extension a discretionary act by the court; it does not treat an absconding finding as automatic or self-executing.

Hairston reinforces that reading. Slip op. at 10-12, 2025 Va. App. LEXIS 693, at *15-17. There, this Court rejected the Commonwealth’s automatic tolling theory under the current version of Code § 19.2-306(C). *Id.*, slip op. at 12, 2025 Va. App. LEXIS 693, at *17. It explained that earlier cases such as *Allison v. Commonwealth*, 40 Va. App. 407 (2003), applied a prior version of the statute. *Id.* *Hairston* concluded that an extension based on absconding “was not automatic and needed to be extended by order of the [circuit] court.” *Id.* In reaching that conclusion, *Hairston* also cited Code § 19.2-304, which permits modification of a probation period upon a hearing after reasonable notice to the defendant and the Commonwealth. *Id.* at *17 n.5. Thus, even assuming Williams absconded from the court’s jurisdiction within the meaning of Code § 19.2-306(C), that finding alone did not extend the expired suspension period or render the subsequent revocation-directed process timely.

The Commonwealth suggests that rejecting automatic tolling creates an “absurd result” by allowing defendants to evade revocation until the notice period expires. However, Code § 19.2-306(B) requires that the court “issue[] process to notify the accused or to compel his appearance before the court” within the statutory period; it does not require actual service within that period. Williams’s absence thus did not prevent the circuit court from preserving its revocation authority and timely issuing revocation-directed process. Since his absence did not automatically extend the statutory period and the court did not extend Williams’s period of suspension based on absconding, the revocation-directed process issued after March 15, 2024, was untimely. The process issued before March 15, 2024, notified Williams only of restitution review and contempt under Code § 19.2-358(E), not that revocation was at issue under Code § 19.2-306.¹⁴

Since the record does not show that the circuit court exercised the discretionary extension authority addressed in Code § 19.2-306(C), the Commonwealth’s absconding argument does not provide an alternative basis to affirm.

CONCLUSION

Code § 19.2-306(B)’s period for the court to issue revocation-directed process expired on March 15, 2024. No revocation-directed process was issued by that date. The parties could have agreed to extend the deadline with the circuit court’s concurrence, but Williams did not agree to an extension and twice objected that no timely process had been issued. Nor did Williams’s alleged absconding automatically extend the period, and the circuit court did not extend his suspension under Code § 19.2-306(C). Since no later proceeding could supply the revocation-

¹⁴ The Commonwealth does not contend that the circuit court extended Williams’s suspension under any provision. We, therefore, do not decide whether an extension under Code § 19.2-306(C) requires use of the procedures in Code § 19.2-304. Under either reading, subsection (C)’s permissive “may” does not make an extension automatic without any act of the court.

directed process, the circuit court lacked active jurisdiction to revoke Williams's suspended sentence, and that defect cannot be cured on remand.

Accordingly, this Court reverses the portion of the circuit court's April 1, 2025 order revoking and resuspending Williams's previously suspended sentence, and enters final judgment on that portion of the order.¹⁵

Reversed and final judgment.

¹⁵ Williams's assignment of error challenges only the revocation. Therefore, this Court does not disturb the circuit court's finding of contempt for nonpayment of restitution under Code § 19.2-358(E), the 60-day sentence imposed for contempt, or Williams's obligation to pay restitution under the previously entered restitution order, independent of the April 1, 2025 order.