

COURT OF APPEALS OF VIRGINIA

Record No. 1154-25-4

DOUGLAS ALLEN HOGLAN
v.
COMMONWEALTH OF VIRGINIA

Present: Chief Judge Decker, Judges AtLee and Callins

Argued at Fredericksburg, Virginia

Opinion Issued September 1, 2026*

FROM THE CIRCUIT COURT OF STAFFORD COUNTY

J. Bruce Strickland, Judge

Timothy W. Barbrow (Law Office of Timothy W. Barbrow, on briefs), for appellant.

Israel-David J.J. Healy, Assistant Attorney General (Jason S. Miyares,¹ Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY CHIEF JUDGE MARLA GRAFF DECKER

Douglas Allen Hoglan appeals an order revoking his suspended sentence based on what the circuit court classified as a non-technical probation violation and imposing one year of active incarceration. The circuit court imposed the sentence after finding that Hoglan violated a special condition of his supervised probation by not successfully completing a sex offender treatment program as instructed by his probation officer. Hoglan argues the violation should have been classified as his first technical violation such that the imposition of a sentence resulting in any active incarceration exceeded the range permitted by Code § 19.2-306.1. The Commonwealth concedes that the court erred. Initially the Commonwealth argued that regardless the appeal is

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

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

moot because Hoglan is no longer incarcerated. But at oral argument after having reviewed the reply brief it agreed that the appeal is not moot.

We hold that the circuit court erred by classifying Hoglan’s violation as non-technical and ordering him to serve a portion of his previously suspended sentence. Further, the case is not moot because of a statutorily authorized fee imposed in conjunction with Hoglan’s active incarceration.² For these reasons, the judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

BACKGROUND³

Douglas Allen Hoglan was convicted in 2008 of three counts of aggravated sexual battery, two counts of possession of child pornography, two counts of adulterating a drink with intent to injure, two counts of adulterating food with intent to injure, and one count of unlawful filming. The circuit court sentenced him to fifty years and thirty-six months of incarceration but suspended thirty-one years and twenty-four months. As conditions of his suspended sentence, the court ordered Hoglan to be of good behavior for twenty years upon his release from incarceration, to have no contact with the victims or “the family,” and to “comply with all the rules and requirements set by the [p]robation [o]fficer,” including undergoing substance abuse counseling and testing.

² Hoglan also assigns error to the circuit court’s rulings regarding the admission of certain evidence at the revocation hearing. In light of our holding, however, it is not necessary to address this evidentiary issue, as it will not arise again on remand. *See Taylor v. Commonwealth*, 78 Va. App. 147, 157 (2023) (recognizing that appellate courts “decide cases ‘on the best and narrowest grounds available’” (quoting *Commonwealth v. Swann*, 290 Va. 194, 196 (2015))); *cf. Hodges v. Commonwealth*, 272 Va. 418, 440 (2006) (reaching a separate admissibility question because it was likely to arise again on remand).

³ The Court considers “the evidence in the ‘light most favorable to the Commonwealth,’ the party prevailing below.” *See Diaz v. Commonwealth*, 80 Va. App. 286, 295 (2024) (quoting *Clanton v. Commonwealth*, 53 Va. App. 561, 564 (2009) (en banc)).

Hoglan began his supervised probation on August 12, 2024. He told his probation officer, Sara Geraldi, that the judicial system and the Department of Corrections “screwed him” by charging him under the wrong sections of the Virginia Code. Probation Officer Geraldi explained to him that he needed to sign and comply with the conditions of probation, including the sex offender special instructions. Hoglan disagreed with several of the stipulated conditions in the instructions but signed the document.

Hoglan reported to a sex offender treatment program on September 9, 2024, but he refused to sign the contract for that group program. Hoglan attended his next sex offender treatment group session but again refused to sign the contract, explaining that he did not “want to sign [his] rights away.” He continued to refuse to sign despite warnings from Geraldi that failing to sign the document would result in a probation violation. The treatment provider dismissed Hoglan from the program because his behavior was “disruptive and argumentative.”

On September 25, 2024, Probation Officer Geraldi filed a major violation report (MVR) stating that Hoglan failed to follow his “Probation and Parole Officer’s instructions” by getting discharged from the sex offender treatment program. At the ensuing revocation hearing, Hoglan chose to represent himself.⁴ To support his theory that he was wrongly referred to a sex offender treatment program, he questioned Geraldi about a variety of topics related to the MVR, her interactions with him, and the information she had available when she referred him to the program. Although the court permitted some of these questions, it sustained the Commonwealth’s objections to others, explaining that they had no relevance to whether Hoglan, in fact, violated the terms or conditions of his probation.

The Commonwealth argued that Hoglan violated the terms and conditions of his probation by failing to abide by sex offender conditions that were required by his probation

⁴ Hoglan’s stand-by trial counsel represents him on appeal.

officer. Hoglan contended that Probation Officer Geraldini should not have placed him in the sex offender treatment program in the first place and therefore he should not have been charged with violating probation. He also argued that any violation was of a technical nature under Code § 19.2-306.1 because his participation in the sex offender treatment program was not ordered by the circuit court.

The court found that Hoglan had violated the terms of his probation. It then concluded that, even though the sentencing order did not require sex offender treatment, Hoglan had violated a special condition of his probation, which the court categorized as a non-technical violation for which a period of incarceration could be imposed. The court revoked the previously suspended sentence and resuspended all but one year. Hoglan incurred a \$25 assessment as a result of his incarceration for the probation violation. He served his sentence and was released on June 11, 2025.

ANALYSIS

I. The Probation Violation

Hoglan argues that the circuit court erred by imposing a one-year sentence of incarceration for his first technical violation. The Commonwealth concedes that the court erred in this respect. Nevertheless, we consider the issue as raised and in its present posture.

“Our fidelity to the uniform application of law precludes us from accepting concessions of law made on appeal.”⁵ *Logan v. Commonwealth*, 47 Va. App. 168, 172 (2005) (en banc); see *Commonwealth v. Holman*, 303 Va. 62, 75 (2024) (distinguishing between a concession of law

⁵ We note that such concessions of law, made in this case by the Commonwealth, embody the ethical duties expected of legal advocates for the Commonwealth and are held in high esteem. See, e.g., *Stephens v. Commonwealth*, 274 Va. 157, 161 (2007) (recognizing the appropriateness of a concession by the Commonwealth); *Jones v. Commonwealth*, 28 Va. App. 444, 447 (1998) (noting the Attorney General’s “candid[] conce[ssion]” on a point of law); see also Va. R. of Pro. Conduct 3.3 (“Candor Toward The Tribunal”). The Court appreciates the candor of counsel for the Commonwealth.

that “is not binding on a court” and “a ‘concession of law that qualifies . . . as a waiver’” (alteration in original) (quoting *Butcher v. Commonwealth*, 298 Va. 392, 395 (2020))). As a result, we conduct an independent examination of this legal issue. See *Logan*, 47 Va. App. at 172 n.4 (recognizing that an appellee may not waive a legal ground for affirming a criminal conviction).

Generally, a circuit court has broad discretion in matters involving probation violations. *Commonwealth v. Delaune*, 302 Va. 644, 657-58 (2023). The “court’s ‘findings of fact and judgment will not be reversed’” on appeal “‘unless there is a clear showing of abuse of discretion.’” *Matheson v. Commonwealth*, 86 Va. App. 201, 207 (2025) (quoting *Jacobs v. Commonwealth*, 61 Va. App. 529, 535 (2013)). The appellate court may “not substitute [its] judgment for that of the [circuit] court” but instead “consider[s] only whether the record fairly supports the . . . court’s action.” *Carter v. Commonwealth*, 293 Va. 537, 543 (2017) (quoting *Grattan v. Commonwealth*, 278 Va. 602, 620 (2009)). But “[a] court always abuses its discretion when it makes an error of law.” *Commonwealth v. Thomas*, 73 Va. App. 121, 127 (2021). Issues of law are reviewed de novo on appeal. See, e.g., *Burford v. Commonwealth*, 78 Va. App. 170, 179 (2023).

Whether a sentence imposed exceeds the bounds of Code § 19.2-306.1 “is solely a question of law.” See *Matheson*, 86 Va. App. at 212. Code § 19.2-306.1(A) categorizes probation violations as technical and non-technical. See *Delaune*, 302 Va. at 655-56. “A ‘technical violation’ is one that ‘specifically matches one of the enumerated technical violations set forth in’” that section. *Ellis v. Commonwealth*, 84 Va. App. 531, 538 (2025) (quoting *Delaune*, 302 Va. at 657). As pertinent to this case, a non-technical violation is a violation of a

condition that does not fall within the technical violations specifically set out in Code § 19.2-306.1(A).⁶ *See* Code § 19.2-306.1(A)-(B).

In conjunction with the designations provided for technical and non-technical violations, the Code provides some parameters for sentencing. Code § 19.2-306.1 restricts the circuit court’s sentencing options for certain technical violations. *See Delaune*, 302 Va. at 656; *Cosby v. Commonwealth*, 81 Va. App. 399, 409 (2024). A term of active incarceration may not be imposed for a first technical violation. Code § 19.2-306.1(C); *see Commonwealth v. Canales*, 304 Va. 200, 211 (2025); *Delaune*, 302 Va. at 658-59; *Ellis*, 84 Va. App. at 546. A maximum of fourteen days of incarceration may be imposed for a second technical violation. Code § 19.2-306.1(C). For a third or subsequent technical violation as well as any single non-technical violation, a circuit court may impose any or all of the previously suspended sentence. Code § 19.2-306.1(B)-(C).

Significantly, Hoglan’s original sentencing order directed him to “comply with all the rules and requirements set by the [p]robation [o]fficer.” Neither the sentencing order nor the transcript of the original sentencing hearing reflects that the circuit court imposed sex offender treatment as a condition of probation. Rather, Hoglan’s probation officer required him to participate in the treatment. A violation of a condition imposed by a probation officer, “without any corresponding . . . condition articulated by the circuit court,” falls under Code § 19.2-306.1(A)(v), “failure to ‘follow the instructions of the probation officer.’” *Ellis*, 84 Va. App. at 545; *cf. Shifflett v. Commonwealth*, 81 Va. App. 277, 297 (2024) (en banc) (holding that failing to complete sex offender counseling and treatment violated a non-technical condition

⁶ The statute does not mention “special conditions.” The focus of an analysis under Code § 19.2-306.1 is not any particular label applied to a violated condition but on the “underlying violation conduct” and whether it matches conduct listed in Code § 19.2-306.1(A). *Thomas v. Commonwealth*, 77 Va. App. 613, 624 (2023) (quoting *Delaune v. Commonwealth*, 76 Va. App. 372, 383, *aff’d*, 302 Va. 644 (2023)).

of probation because the court’s sentencing order specifically required completion of the program). As such, Hoglan’s failure to comply with his probation officer’s instructions regarding the sex offender treatment program matched the technical violation set out in Code § 19.2-306.1(A)(v). Consequently, the circuit court erred in finding Hoglan violated a *non-technical* condition. *See Ellis*, 84 Va. App. at 545-46 (holding that Ellis’s failure to comply with the sex offender instructions imposed by his probation officer was a technical violation because there was no corresponding condition ordered by the circuit court).

Correspondingly, the court necessarily erred because it lacked the authority to order Hoglan to serve one year of active incarceration for what was a first technical violation, not a non-technical one. *See* Code § 19.2-306.1(C); *Matheson*, 86 Va. App. at 212 (holding that the circuit court abused its discretion when it imposed a six-month sentence for a first technical violation); *Ellis*, 84 Va. App. at 546 (holding that the circuit court erred in imposing a term of active incarceration for a first technical violation).

II. Mootness

The Commonwealth initially argued that, regardless of the sentencing error, the appeal is moot. Since then, it abandoned the mootness argument. With reversal of the trial court at issue, we consider the legal question of whether the appeal is moot. Generally, “[a] case is moot and must be dismissed when the controversy that existed between litigants has ceased to exist.” *Commonwealth v. Browne*, 303 Va. 90, 91 (2024) (quoting *Daily Press, Inc. v. Commonwealth*, 285 Va. 447, 452 (2013)). Further, a case can become moot if “[c]hanging events . . . make it impossible for a court to award a litigant the relief requested.” *Matheson*, 86 Va. App. at 208 (first alteration in original) (quoting *Browne*, 303 Va. at 91-92). “An exception to the mootness doctrine” may apply if the “underlying dispute is ‘capable of repetition, yet evading review.’” *Browne*, 303 Va. at 95 (quoting *Daily Press*, 285 Va. at 452).

Here, Hoglan incurred a \$25 assessment as a result of his incarceration for the probation violation.⁷ *See generally* Code § 15.2-1613.1 (permitting localities to “authorize a processing fee not to exceed \$25 on any individual admitted to a county, city, or regional jail following conviction”). This fee “cannot stand” because it “stems from an unauthorized sanction.” *Matheson*, 86 Va. App. at 204-05 (holding that the case was not moot because the appellant was charged the \$25 fee based on an improper sentence). As this Court has made clear, “[w]hile we cannot undo a wrongfully imposed period of incarceration that has already been fully served, we may remand the matter to ensure a refund of any fee assessment that was improperly imposed” *Id.* at 212; *see Browne*, 303 Va. at 93 (referring to “a concrete and continuing injury” as “a collateral consequence of the conviction” (quoting *E.C. v. Va. Dep’t of Juv. Just.*, 283 Va. 522, 531 (2012))). Since a remedy is available, Hoglan’s case is not moot.⁸ Accordingly, we reverse the judgment and remand with instructions to resentence Hoglan to a sentence of no incarceration, consistent with Code § 19.2-306.1(C), and to ensure a refund of the unauthorized \$25 jail admission fee. *See Matheson*, 86 Va. App. at 215.

CONCLUSION

The circuit court erred in ruling that Hoglan’s probation violation was a non-technical violation. Consequently, it did not have the authority under Code § 19.2-306.1 to impose a one-year active sentence. Further, the appeal is not moot. As a result, the judgment is reversed, and

⁷ When deciding “whether a case has become moot during the pendency of an appeal,” “[a]n appellate court may consider extrinsic evidence that is not already part of the record.” *See Browne*, 303 Va. at 92.

⁸ Hoglan also represents in his reply brief that he faces another charge in the Stafford County Circuit Court for violating a “special condition” of probation for failing to comply with sex offender treatment. In light of our holding that the appeal is not moot because of the \$25 fee, we do not reach the question of whether an exception to the mootness doctrine should apply because the issue raised is capable of repetition. *See generally Lane v. Commonwealth*, 82 Va. App. 658, 666 (2024) (applying “the ‘capable of repetition, yet evading review’ exception to the mootness doctrine” to a sentencing error under Code § 19.2-306.1).

the case is remanded for correction of the sentence in accordance with Code § 19.2-306.1 for a first technical violation. *See Ellis*, 84 Va. App. at 546; *Thomas v. Commonwealth*, 77 Va. App. 613, 627 (2023).

Reversed and remanded.