

STATE OF MAINE

v.

RALPH E. MICHAUD JR.

Argued June 14, 2018
Decided June 28, 2018

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

In 2004, after pleading guilty to two counts of gross sexual assault (Class A), 17-A M.R.S.A. § 253(1)(B) (2004),¹ Ralph E. Michaud received consecutive sentences, totaling twenty-three years' imprisonment, with eight years' imprisonment to be served, followed by twelve years' probation. His probation conditions included, among others, that he (i) not use or possess unlawful drugs; (ii) complete substance abuse, sex offender, and psychological counseling and treatment as directed by his probation officer; and (iii) not view or possess sexually oriented material or utilize the internet.

In September 2016, Michaud was charged with violating his conditions of probation after (1) testing positive for and admitting to the use of an illegal drug, and (2) failing to maintain enrollment in sex offender counseling after being suspended from the treatment program for violating several conditions of the treatment contract. Michaud admitted to the violation alleging

¹ Title 17-A M.R.S. § 253 has been amended several times since 2004. Those amendments are not material to the issues on this appeal.

possession and use of an illegal drug, but contested the allegation that he failed to maintain enrollment in sex offender counseling.

After a contested hearing, the trial court (Kennebec County, *Mullen, J.*), citing evidence of the counseling violations in the record and finding that Michaud's probation officer was "a credible witness," concluded that Michaud had violated a condition of his probation by failing to complete the court-ordered sex offender counseling and treatment. At a subsequent sentencing hearing, after hearing more evidence relating to Michaud's lack of compliance with his conditions of probation, the court ordered that Michaud serve thirty months of the suspended portion of his sentence.

Michaud petitioned for our discretionary review of the probation revocation. *See* 17-A M.R.S. § 1207(1) (2017); M.R. App. P. 19(a)(2)(B). Noting that the trial court's judgment lacked an explicit finding that Michaud had "inexcusably failed to comply with . . . a condition of [his] probation," 17-A M.R.S. § 1206(6) (2017), we (*Gorman, J.*) remanded the matter for further findings. On remand, the trial court made further findings, including an express finding that Michaud's probation violations were "inexcusable." After the trial court's response to the remand, we issued a certificate of probable cause, *see* M.R. App. P. 19(f), allowing Michaud's appeal.

On appeal, Michaud argues that the trial court violated his substantive and procedural due process rights by (1) impermissibly shifting the burden of proof to him, (2) erroneously finding that he inexcusably violated the terms of his probation, and (3) failing to provide a statement of the evidence that the court relied upon to find that his violations were inexcusable.

Contrary to Michaud's contentions, the court found that the State had proved that his probation violations were "inexcusable" and did not impermissibly shift the burden of proof to Michaud by observing that—in response to Michaud's claim that he lacked notice that his "technical violations" could result in a motion to revoke—Michaud offered no evidence at the violation hearing. *See State v. James*, 2002 ME 86, ¶ 9, 797 A.2d 732.

Furthermore, the court did not err by finding that Michaud's failure to "complete" sex offender treatment "as directed by [his] probation officer" was inexcusable where that finding was supported by evidence that the treatment

provider, after consulting with Michaud's probation officer, suspended Michaud from the program for failing to follow the terms of his treatment contract, viewing sexually oriented materials and minimizing his behaviors, and by the probation officer's testimony that he had personally observed some of the behaviors leading to Michaud's suspension from the program. *See State v. Maier*, 423 A.2d 235, 240 (Me. 1980); *State v. Sommer*, 388 A.2d 110, 113 (Me. 1978).

Finally, the court's orders included a sufficient statement of its factual findings, supporting its conclusion that Michaud's violations of the terms of his probation were "inexcusable." *See State v. Foisy*, 384 A.2d 42, 44-45 (Me. 1978). Once a trial court has found the facts, whether requested by motion or required by law, the court need not explain the rationale used to reach each fact or conclusion of law. *Wandishin v. Wandishin*, 2009 ME 73, ¶ 19, 976 A.2d 949.

The entry is:

Judgment affirmed.

Rory A. McNamara, Esq. (orally), Drake Law, LLC, Berwick, for appellant Ralph E. Michaud Jr.

Maeghan Maloney, District Attorney, and Frayla Tarpinian, Asst. Dist. Atty. (orally), Prosecutorial District IV, Augusta, for appellee State of Maine