SECOND DIVISION
DOYLE, P. J.,
DAVIS and WHITAKER, JJ.

NOTICE: Motions for reconsideration must be received no later than 4:30 pm on the 10th day after the decision was issued to be deemed timely filed.
https://www.gaappeals.gov/rules

October 29, 2026

In the Court of Appeals of Georgia

A26A1216. MCMURRAY v. THE STATE.

WHITAKER, Judge.

Michael Cedrick McMurray appeals from the trial court's order revoking his first offender status, adjudicating him guilty, and sentencing him to ten years, with credit for time served as a first offender. He contends that the trial court erred by finding a violation of a special condition that was ambiguous on his first offender sentencing form and did not properly impose any special conditions on his probation and that the probation revocation hearing was fundamentally unfair. For the reasons set forth below, we affirm.

The record shows that in September 2025, McMurray entered a negotiated guilty plea to one count each of cruelty to children in the second degree, family

violence aggravated battery, and family violence battery. The trial court accepted McMurray's request to be sentenced as a first offender and sentenced him to 10 years, with 133 days to be served in confinement and the balance on probation. During the plea hearing, McMurray acknowledged that he had agreed to enter the Conasauga Judicial Circuit's domestic violence court program and had signed the domestic violence court contract. In addition, he acknowledged that he understood that complying with the contract and having no contact with the named victims were both conditions of his probation. McMurray further acknowledged his understanding that, as a first offender, if he violated a condition of his probation, he could be adjudicated guilty and resentenced up to the maximum on each of the charged offenses, with credit for any time served as a first offender.

The final disposition form issued following the September 2025 plea hearing reflects the negotiated plea and is signed by the trial court judge. Under the heading "First Offender or Conditional Discharge," the form states, "Upon violation of the terms of probation, ... the Court may enter an adjudication of guilt and proceed to sentence the Defendant to the maximum sentence as provided by law." Attached to the form is an addendum that includes an "Inventory of Conditions of Probation,"

and the conditions contained therein are "incorporated into the Defendant's sentence by reference." One of the labeled "Special Conditions," which is marked with an "X," is that McMurray have no contact of any kind with the named victims.

In October 2025, a warrant was issued for McMurray's arrest for violating a special condition of his probation by having contact with one of the victims, B. M. At a December 2025 probation revocation hearing, McMurray, through counsel, admitted the violation alleged in the warrant. After hearing evidence in mitigation — including testimony from B. M., McMurray's mother, and McMurray — the trial court issued a December 2025 order revoking McMurray's first offender status, adjudicating him guilty, and sentencing him to ten years to serve, with credit for time served. McMurray filed a direct appeal from the trial court's December 2025 order.

1. We first consider our jurisdiction to address McMurray's direct appeal.[1] See *Gilliam v. State*, 312 Ga. 60, 61 (860 SE2d 543) (2021) ("It is not only the right but the

[1] As the Supreme Court of Georgia recently acknowledged, Georgia's appellate courts "have often used the phrase 'direct appeal' confusingly to 'refer to two different concepts: (1) an immediate appeal under OCGA § 5-6-34(a) for which permission is not required to be obtained through the interlocutory review process; and (2) an appeal that is entitled to come by a notice of appeal, not an application for discretionary review.' But 'these are not the same.'" *Howard v. State*, 319 Ga. 114, 116(1) n.1 (902 SE2d 551) (2024) (citation modified).

duty of a reviewing or appellate court to raise the question of its jurisdiction in all cases in which there may be any doubt as to the existence of such jurisdiction." (punctuation omitted)). And in so doing, we look to our Supreme Court's recent explication of the issue in *Howard v. State*, 319 Ga. 114 (902 SE2d 551) (2024) (determining that revocation of first offender status and resulting adjudication of guilt is distinct from mere revocation of probation[2] and that an appeal from an adjudication of guilt following first offender revocation is not covered by OCGA § 5-6-35(a)(5) governing "[a]ppeals from orders revoking probation").[3]

As detailed in *Howard*, 319 Ga. at 115(1), OCGA § 5-6-34 and OCGA § 5-6-35 are the primary code sections governing how appeals to Georgia's appellate courts may be taken. OCGA § 5-6-34(a) identifies trial court decisions that may be appealed immediately, while OCGA § 5-6-34(b) establishes a procedure for potentially securing an interlocutory appeal of a decision that would otherwise not be immediately appealable. If a trial court's decision *is* immediately appealable under OCGA §

---

[2] "Appeals from orders revoking probation" are made by application for discretionary appeal pursuant to OCGA § 5-6-35(a)(5).

[3] Post-*Howard*, the General Assembly amended OCGA 5-6-35, precipitating our jurisdictional review.

5-6-34(a), a would-be appellant must then reference OCGA § 5-6-35 to determine whether the litigant must nonetheless file an application for discretionary review. "If the underlying subject matter of the appeal is one of the categories of cases listed in OCGA § 5-6-35(a), the appeal must be by application even when the party is appealing a judgment or order that is procedurally subject to immediate appeal under OCGA § 5-6-34 (a)." Id. at 116(1) (punctuation omitted).

Thus, in *Howard*, our Supreme Court looked first to OCGA § 5-6-34(a) to see that defendants in criminal cases are permitted to take an immediate appeal by notice of appeal from "[a]ll final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35." OCGA § 5-6-34(a)(1). The Court then explained that under Georgia's First Offender Act, which it characterized as a "unique act," a defendant pleading guilty to certain felonies who is granted "first offender" status is sentenced, whether to probation or confinement, *before* being adjudicated guilty. *Howard*, 319 Ga. at 117(2). In other words, "the imposition of a first-offender sentence under OCGA § 42-8-60(a) defers further proceedings, and the charge remains pending for the duration of the

first-offender sentence." Id. at 117(2)(a) (punctuation omitted).[4] "So when a first-offender sentence is not completed successfully and the trial court enters an adjudication of guilt and sentence, this is the first judgment of guilt entered against that defendant. See OCGA § 42-8-60(d)." Id. at 121(2)(b). "At that point, the defendant stands convicted under Georgia's Criminal Code, and the new sentence is based on a just-arrived at adjudication of guilt." Id. (punctuation omitted).

After confirming that a first offender revocation and resulting adjudication of guilt and imposition of sentence is a final judgment subject to immediate appeal under 5-6-34(a)(1) unless otherwise provided in OCGA § 5-6-35, the *Howard* Court then turned to OCGA § 5-6-35(a) to determine whether a first offender revocation and

---

[4] At the time *Howard* was decided, that court observed that "defendants will be entitled to directly appeal both the initial entry of a first-offender sentence (because OCGA § 42-8-64 says they can) and the entry of an adjudication of guilt and sentence (because it is a final judgment under OCGA § 5-6-34)." 319 Ga. at 121(2)(c). As noted in *Howard*, OCGA § 42-8-64 provided at that time — and still provides: "A defendant sentenced pursuant to this article shall have the right to appeal in the same manner and with the same scope and same effect as if a judgment of conviction had been entered and appealed from." But because our General Assembly has amended OCGA § 5-6-35, effective May 14, 2025, to add "[d]irect appeals from guilty pleas" to the list of cases in which appeals must be taken by application, see OCGA § 5-6-35 (a)(5.3), appeals from the initial entry of first offender guilty plea sentences imposed on or after May 14, 2025, must now come by application as well. See *Clark v. State*, 378 Ga. App. 111, 111 n.1 (924 SE2d 346) (2025) (applying "the law governing appellate procedure [in effect] at the time the sentence was entered").

adjudication of guilt was listed as a class of case for which a discretionary application for permission to appeal must be filed. 319 Ga. at 118(2)(a), 119(2)(b). Having examined that statute, the Supreme Court determined:

> The text of OCGA § 5-6-35(a) does not include the entry of an adjudication of guilt and sentence upon the revocation of first-offender status as one of the categories of cases which requires the filing of a discretionary application. See OCGA § 5-6-35(a). If the legislature had intended to include an adjudication of guilt in that provision, it could have (and still can), but we do not have the authority to rewrite statutes, so when the text is plain, we must follow it. Therefore, we reject an interpretation that would add to the statute that which the legislature did not include.

Id. at 119(2)(b) (citation modified).

As previously noted in this opinion, the legislature has, since the issuance of *Howard*, amended OCGA § 5-6-35(a) to include "direct appeals from guilty pleas" in the list of cases otherwise immediately appealable which must now be taken by discretionary application. Hence, the jurisdictional question: is first offender adjudication of guilt and imposition of sentence a "direct appeal from a guilty plea," such that it must now be by application, or is it — as a final judgment — still immediately appealable of right via notice of appeal because the General Assembly has

still not included it in the categories of cases required to file a discretionary application? See OCGA § 5-6-35(a); *Howard*, 314 Ga. at 119(2)(b).

Howard made clear that first offender revocation and resulting adjudication of guilt and imposition of sentence is distinct from either a probation revocation or the entry of the guilty plea that, initially at least, results in first offender sentencing. And "the legislature is presumed to know the condition of the law and to enact statutes with reference to it." *Williams v. State*, 299 Ga. 632, 634 (791 SE2d 55) (2016) (punctuation omitted). See also *Owens v. State*, 353 Ga. App. 848, 851(1) (840 SE2d 70) (2020). Yet even though the legislature added appeals from guilty pleas, a class of otherwise immediately-appealable cases, to OCGA 5-6-35(a)'s discretionary appeal list, the General Assembly did not add "the entry of an adjudication of guilt and sentence upon the revocation of first-offender status as one of the categories of cases which requires the filing of a discretionary application[,]" *Howard*, 319 Ga. at 119(2)(b), even after *Howard's* specific reference to its absence from OCGA § 5-6-35(a). Thus, under the plain language of OCGA § 5-6-34(a) and OCGA § 5-6-35(a), as well as the clear directive of *Howard*, we do not read these statutes as requiring an application for discretionary appeal in this case.

It may be that due to the "uniqueness" of the First Offender Act, the legislature determined that an appeal from a trial court order revoking first offender status and entering an adjudication of guilt and sentence should still be of right through a direct appeal. It may be for some other reason, or no reason at all. That is not for this Court to determine. What is clear is that our holding today, at least on this jurisdictional issue, "is required by the statutory text, which we cannot change to achieve a 'better' policy outcome." *Howard*, 319 Ga. at 121(2)(c).

2. Turning to the merits, McMurray contends that the trial court erred in relying on a sentencing form that he argues does not clearly designate any special conditions of his probation and fails to expressly incorporate any separate document containing those conditions.

OCGA § 42-8-60(d)(1) provides that when a defendant violates the terms of his first offender probation, "[t]he court may enter an adjudication of guilt and proceed to sentence the defendant as otherwise provided by law[.]" See *Roland v. Meadows*, 273 Ga. 857, 859(1) (548 SE2d 289) (2001) ("Upon revocation [of first offender

status] and an adjudication of guilt, a probationer under OCGA § 42-8-60 may be sentenced to the maximum penalty allowable by law for the charged offense.").[5]

Here, the "no contact" condition of McMurray's probation was clearly included in the inventory attached to and incorporated by reference into his first offender sentencing form. The sentencing form also advised McMurray that upon violation of the terms of his probation, the trial court may enter an adjudication of guilt and proceed to sentence him to the maximum sentence as provided by law. Thus, the trial court did not err in relying on the terms of the first offender sentencing form and its incorporated attachment to determine that a condition of probation had been violated and subsequently revoking his first offender status, adjudicating him guilty, and sentencing him to ten years to serve, with credit for time served. See *Roland*, 273 Ga. at 858(1) ("When a first offender probationer violates the terms of his probation and the trial court enters an adjudication of guilt, the court may impose any sentence permitted by law for the offense the probationer has been found guilty of

[5] Although the trial court here did not impose an enhanced sentence, in *Roland*, our Supreme Court recognized that "before a first offender probationer may be resentenced to a sentence greater than that imposed at the entry of the plea, the accused must be so informed of that eventuality. In addition, upon revocation of probation and an adjudication of guilt, any new sentence imposed must credit the defendant with time served on probation." 273 Ga. at 859(1) (citation modified).

committing."); *Jowers v. Washington*, 284 Ga. 478, 479(1), 482(2) (668 SE2d 703) (2008) (upholding a probation revocation based on a violation of the "Special Conditions" listed in an exhibit attached to the sentencing order that was "specifically incorporated herein and made a part hereof"). See generally *Harris v. Baker*, 287 Ga. App. 814, 816 (652 SE2d 867) (2007) ("[T]wo or more documents can together create a single contract if one of them is referenced by or incorporated into the other.").[6]

The two cases relied upon by McMurray do not require a different conclusion. Unlike *Hodge v. State*, 368 Ga. App. 839, 841 (891 SE2d 70) (2023), this is not a situation where the trial court stated orally that certain conditions would be made special conditions of probation but failed to include that pronouncement in its subsequent written order. Instead, the trial court explained the special condition at issue to McMurray orally and then included it in its subsequently-issued sentencing form. Nor is this a case where the trial court failed to check the relevant box next to

[6] In his brief, McMurray also complains that the sentencing form does not contain his signature, but he clarifies in his reply brief that he does not contend that this omission is fatal; instead, he argues that it "amplifies the structural defect in the sentencing documents." But he cites no authority that would require his signature and, as set forth above, the trial court was entitled to rely on the terms of the first offender sentencing form and its incorporated attachment to determine that a condition of probation had been violated.

the special condition at issue, as was the situation in *Jones v. State*, 282 Ga. 784, 787(1)(a) (653 SE2d 456) (2007).

3. McMurray also contends that the probation revocation hearing was fundamentally unfair due to multiple due process violations.

As McMurray correctly points out, "[d]ue process requires that a defendant be given written notice of the claimed violation of his probation prior to a probation revocation hearing." *Jones v. State*, 314 Ga. App. 442, 443 (724 SE2d 454) (2012) (punctuation omitted). And "in order to revoke the probationary features of a sentence[,] the defendant must have notice and opportunity to be heard, the notice being sufficient to inform him not only of the time and place of the hearing and the fact that revocation is sought, but the grounds upon which it is based." Id. We review de novo the question of whether the proceeding accorded McMurray due process. See *Dave v. State*, 365 Ga. App. 1, 5(3) (876 SE2d 882) (2022).

(a) McMurray first argues that he received written notice of only one violation of his probation, but that additional violations were mentioned at the revocation hearing. Specifically, he complains of a statement made by a probation officer at the

end of the hearing that the contact referenced in the warrant was not the only contact between McMurray and B. M. during his probation.

The record shows that McMurray was given the required notice. He admittedly received notice of the warrant, which alleged that on October 13, 2025, he violated the special condition of his probation that he have no contact with B. M. And at the beginning of the revocation hearing, his counsel informed the court, "this is going to be an admission[,] and we're going to have evidence in mitigation for you." His counsel then stated that McMurray admitted to the specific allegation contained in the warrant, and at the conclusion of the hearing, the trial court found that McMurray had violated the terms of his probation "based upon [his] admission." Thus, the probation officer's unsworn statement did not form the basis for the revocation, and McMurray was notified in writing of the claimed violation prior to the revocation hearing.

(b) McMurray takes the position that neither he nor his counsel was served with notice of the revocation hearing because the record does not contain a certificate of service indicating such service.

But the lack of a certificate of service does not equate to a due process violation. The record shows that McMurray appeared at the hearing with not one but two

attorneys, who had notice sufficient to arrange for two witnesses to testify on his behalf. Cf. *Dave*, 365 Ga. App. at 7(3) (defendant's due process rights were violated when she was not notified of the time and place of the hearing terminating her from a mental health court program, and neither she nor her counsel attended, so she had no opportunity to explain her alleged failure to comply with the program requirements or make any arguments in mitigation).[7]

(c) Next, McMurray argues that his stipulation to the allegation in the warrant was not knowing, voluntary, or intelligent because the trial court failed to inform him of his rights and did not explain the possible consequences of the stipulation.

McMurray appears to be seeking to import into a revocation hearing the protections of *Boykin v. Alabama*, 395 US 238, 242 (89 SCt 1709, 23 LE2d 274) (1969), in which the United States Supreme Court held that it was a violation of due process for a state trial court to accept a guilty plea without an affirmative showing that the plea was voluntary and intelligent. Id. at 242-244. But the Supreme Court of Georgia

[7] McMurray also argues that the absence of a formal petition for revocation deprived him of notice and the ability to prepare and present a defense. But he fails to cite any authority supporting this argument and, as set forth above, he had written notice of the claimed violation prior to the revocation hearing, and he and his counsel presented mitigating evidence on his behalf.

has recognized that "admitting to probation violations at a revocation hearing is not the equivalent of pleading guilty to a crime," and has held that "there is no constitutional requirement that a court engage in [a] *Boykin* voluntariness colloquy before accepting a probationer's admission of probation violations." *Meadows v. Settles*, 274 Ga. 858, 859-860(2) (561 SE2d 105) (2002) (punctuation omitted).

(d) McMurray further argues that he was prevented from addressing the court during the revocation hearing.

In fact, McMurray, his mother, and B. M. all spoke on his behalf, and their statements were not limited in any way. Only after his mother spoke for a second time, at length, and McMurray asked to address the court again, did the trial court state, "I think we're about ... done on that." Thus, McMurray was not denied the opportunity to be heard.

(e) Finally, McMurray complains that he was incarcerated for approximately 54 days prior to the revocation hearing, which he argues magnified the due process violations.

OCGA § 42-8-38(b) provides that when a probation violator has been arrested, "the court shall give the probationer an opportunity to be heard fully at the earliest

possible date on his or her own behalf, in person or by counsel[.]" "What constitutes 'within a reasonable time' or 'at the earliest possible date' depends on the circumstances of the case." *Murphy v. State*, 370 Ga. App. 738, 745(3) (899 SE2d 307) (2024).

The record shows that the arrest warrant was issued on October 14, 2025, and that the revocation hearing was conducted on December 4, 2025, but it does not indicate whether the hearing could have been conducted any sooner. Nor does the record reflect that McMurray requested an earlier hearing or that he raised any objections in the trial court related to the timing of the hearing. Under the circumstances, pretermitting whether McMurray waived any objection to the timing of the hearing, "we fail to see how [it] constitutes a due process or statutory violation." *Murphy*, 370 Ga. App. at 746(3). See id. (declining to find that an approximately one-year delay violated due process or OCGA § 42-8-38(b)); *Cooper v. State*, 370 Ga. App. 187, 189(1)(b) (895 SE2d 522) (2023) (concluding that a 44-day pre-hearing detention was not so unreasonable as to require dismissal of the petition to revoke defendant's probation).

Judgment affirmed. Doyle, P. J., and Davis, J., concur.