

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-002361-MR

TIMOTHY GRUNDY

APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE DANIEL J. VENTERS, JUDGE  
ACTION NO. 92-CR-26

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: GUDGEL, CHIEF JUDGE, GARDNER AND MILLER, JUDGES.

GARDNER, JUDGE: Timothy Grundy (Grundy) appeals from an order of the Pulaski Circuit Court revoking his probation and sentencing him to imprisonment. Grundy argues to this Court that he was denied due process of law, because the trial court revoked his probation based upon grounds for which he was afforded no prior notice and that the revocation and re-sentencing was beyond the trial court's jurisdiction. He also argues that he was denied the right to be heard. A review of the record below and the applicable law refutes Grundy's arguments. Therefore, we must affirm.

In August 1992, Grundy pled guilty to one count of theft by unlawful taking of property valued over \$100. The court sentenced him to five years in prison. In October 1992, the trial court granted Grundy shock probation. The court's probation conditions were that (1) Grundy remain on good behavior and not violate the law, (2) he shall avoid the use of alcohol and drugs unless he has a prescription for them, (3) he shall obtain his GED, (4) he shall abide by the rules and regulations of the probation officer, (5) he shall report to the Probation and Parole Office within five days of being released from custody and shall continue to report to the Probation Office as ordered by the Probation Officer, and (6) he shall pay the probation supervision fee.

In November 1993, Grundy was sent a notice of a probation revocation hearing because of several probation violations. In December 1993, he was arrested because of probation violations and in February 1994, an order continuing the case until April 1994 was entered. In September 1994, Grundy was again arrested for violating his probation conditions.<sup>1</sup> In November 1994, the trial court issued another notice of a probation violation hearing regarding several alleged violations of probation conditions. Again, no order revoking Grundy's probation was entered in the record.

In November 1996, the Commonwealth filed a motion to revoke Grundy's probation due to the following probation violations: (1) failure to report to his probation officer on

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<sup>1</sup>No order revoking his probation was entered in the record.

7/5/96, 9/13/96, and 10/7/96; (2) failure to maintain full-time employment; (3) being \$220 in arrears for his probation supervision fees; and, (4) failure to obtain a GED. A supporting affidavit from Grundy's probation officer accompanied the Commonwealth's motion. Grundy was subsequently arrested in both February 1997 and July 1997 for violating the conditions of his probation. In August 1997, the trial court held a probation revocation hearing. Both sides presented information to the court. The court stated at the end of the hearing that it was going to revoke Grundy's probation.

On September 9, 1997, the trial court by order revoked Grundy's probation stating that there was probable cause to believe that he had violated the terms of his probation by failing to obtain his GED and by failing to maintain full-time employment. On September 17, 1997, the court in a supplemental order, additionally found that Grundy had failed to seek employment in good faith and failed to work faithfully as much as possible. It also found that he was ordered to appear in court on May 22, 1997, for a hearing on his probation status and failed to appear, that he had failed to report to his probation officer, absconded supervision of his probation officer, failed to obtain his GED and failed to keep his probation officer apprised of his address. The court noted that in spite of being warned of and excused from similar violations in November 1993, April 1994, and November 1996, Grundy persistently refused to comply with the probation conditions. Grundy has appealed from the orders revoking his probation.

Grundy argues on appeal that he was denied due process of the law, because the court below revoked his probation on grounds for which he was afforded no prior notice. He also maintains that his revocation and re-sentencing was beyond the trial court's jurisdiction. We have uncovered no reversible error. Kentucky Revised Statute (KRS) 533.020(1) provides in part,

Conditions of probation shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation.

KRS 533.050(2) states, "[t]he court may not revoke or modify the conditions of a sentence of probation or conditional discharge except after a hearing with defendant represented by counsel and following a written notice of the grounds for revocation or modification." See Rasdon v. Commonwealth, Ky. App., 701 S.W.2d 716 (1986). Revocation hearings must be conducted in accordance with minimum requirements of due process of law. Rasdon v. Commonwealth, 701 S.W.2d at 718. A written notice of the grounds for the proposed revocation is an absolute essential for a revocation proceeding. Id., at 719. Whether a trial court revoked upon one violation or three is of no consequence to the defendant so long as the evidence supports at least one violation. Messer v. Commonwealth, Ky. App., 754 S.W.2d 872, 873 (1988).

In the instant case, numerous grounds existed for revoking Grundy's probation. He was specifically given notice

prior to the revocation hearing regarding most of them. He was notified regarding his failure to report to his probation officer on three occasions, failure to maintain full-time employment, being \$220 in arrears for his probation supervision fees and his failure to obtain a GED. While the court did use two grounds, failure to keep his probation officer apprised of his address and failure to appear in court on May 22, 1997, for revoking his probation, which were not mentioned in the notice Grundy received, there were more than enough other grounds to justify revoking his probation. There was ample evidence to show that Grundy had violated more than one condition of his probation and had done so on more than one occasion. Thus, Grundy was not prejudiced by the court's listing of these other grounds. See generally Small v. Commonwealth, Ky. App., 617 S.W.2d 61, 63 (1981); Kentucky Rule of Criminal Procedure (RCr) 9.24. Grundy's assertion that the court lacked jurisdiction to hear the matter clearly lacks merit. KRS 533.020 and 533.050 give the circuit court authority and jurisdiction to hear such matters.<sup>2</sup>

Grundy also argues that he was denied due process because he was denied the right to be heard. The record refutes Grundy's argument. The record shows that the court allowed all parties to speak and present their positions. The court specifically asked Grundy if he had anything to say in his behalf

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<sup>2</sup>The Commonwealth argues that Grundy waived any alleged error in the notice received. We do not believe that Grundy waived arguments concerning grounds used in the court's order which were not provided in the notice of revocation; however, we do believe that Grundy should have raised arguments before the trial court regarding alleged lack of jurisdiction. See Kentucky Rule of Civil Procedure (CR) 12.08.

to which Grundy replied negatively. The court did emphatically decide to revoke Grundy's probation, but the record reflects that Grundy had been given numerous chances to comply with the court's probation conditions but failed to do so.

For the foregoing reasons, this Court affirms the orders of the Pulaski Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Irvin J. Halbleib, Jr.  
Louisville, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler III  
Attorney General

Courtney A. Jones  
Assistant Attorney General  
Frankfort, Kentucky