

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-002377-MR

CHARLES J. DEAN

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE EDWIN A. SCHROERING, JR., JUDGE
ACTION NO. 93-CR-2137

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION REVERSING AND REMANDING

* * * * *

BEFORE: GUDGEL, Chief Judge; DYCHE and MILLER, Judges.

GUDGEL, CHIEF JUDGE: This is a pro se appeal from an order entered by the Jefferson Circuit Court ordering appellant's probation revoked. We agree with appellant's contention that prior to the hearing, he was provided inadequate notice regarding the grounds for the revocation. Hence, we are constrained to reverse and remand.

Appellant pled guilty to amended drug charges in January 1995. He was sentenced in December 1995 to serve eight years, probated for five years on the condition that he would adhere to the terms of his probation, including reporting to his

probation officer each month and reporting any arrests within 72 hours.

The Commonwealth filed a motion in March 1996 to revoke appellant's probation. However, based on the parties' agreement, the motion was denied after appellant completed a drug treatment program. The court specifically noted in its order that any additional grounds for revocation "must be addressed by subsequent motion to revoke, with notice."

On November 14 the Commonwealth filed another motion to revoke, based on the probation officer's request for a hearing due to appellant's:

1. Failure to report an arrest within 72 hours.
2. Failure to continue treatment with V.A.

Mr. Dean was arrested by Veteran's police department and charged with Disorderly Conduct; Resisting Arrest and Terroristic Threatening. The report reads:

"Mr. Dean was brought to VA [sic] Hospital by EMS. He was seen in the emergency room by the doctor. He was not admitted because he cussed the doctor and nursing staff. We were called. He was escorted from the emergency room and told to catch the next bus. He didn't catch the next bus or the next bus. He was told by this officer (Barnett) that if he didn't catch the next bus then he would [sic] be arrested. He didn't catch the bus and became disorderly with the officer. He was arrested but resisted and threatened officer."

Mr. Dean was released from jail on 10-31-96 and as of this writing has failed to report this arrest within 72 hours. This officer called V.A. treatment center on 11-1-96 and

talked to Sylvia Savage, (Mr. Dean's counselor) and she stated Mr. Dean failed to show up for Track I counseling program and as of this date has been dropped from the program. Mr. Dean is to appear in Jefferson District Court #105 on 11-19-96 for the above mentioned charge.

Although a bench warrant was issued after appellant failed to appear in court, he was not arrested until June 1997.

A revocation hearing was conducted in September 1997. Appellant's appointed counsel was unable to appear at the hearing, and a substitute counsel requested a continuance. After briefly reviewing the matters before it, the court denied the verbal request for a continuance but recessed for a short time to allow counsel and appellant to confer.

Appellant's probation officer then testified that appellant was scheduled to complete a hospital drug treatment program on October 24, 1996, but that he failed to do so. Although appellant met with his probation officer on October 23, he both failed to report his subsequent arrest within the required 72-hour period, and failed to report back to the probation officer on his scheduled reporting date of November 6 or at any time thereafter. At the hearing's conclusion, the court revoked appellant's probation due to his failure to report to his probation officer each month.

Appellant's failure to report to his probation officer on a monthly basis was not listed in the November 1996 motion or the accompanying documents as a ground for revoking his probation, although he clearly was entitled to advance notice

regarding this ground. Contrary to the Commonwealth's argument, the allegation that appellant failed to timely report his arrest did not provide adequate notice that his probation could be revoked at the hearing for failing to comply with the monthly reporting requirement. Indeed, the "Conditions of Supervision" document signed by appellant clearly lists the arrest report requirement and the monthly reporting requirement as separate and distinct terms of probation. That being so, we are constrained to conclude that the court's order must be reversed and that this matter must be remanded. On remand, appellant should be given proper notice of the proposed grounds for revoking his probation, and the court should then conduct a new hearing.

In light of our conclusions to this point, we need not address appellant's remaining contentions.

The court's order is reversed and remanded for further proceedings consistent with the views expressed in this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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