

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000987-MR

CONNIE ANTHONY BLACKETER

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE JANET P. COLEMAN, JUDGE
ACTION NO. 02-CR-00068

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: KELLER AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

KELLER, JUDGE: Connie Anthony Blacketer appeals from the order of the Hardin Circuit Court revoking his probation. On appeal, Blacketer argues that he was not criminally responsible for the actions that led to the revocation of his probation. For the reasons set forth below, we affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

FACTS

The facts in this case are not in dispute. On September 4, 2002, Blacketer, a juvenile, entered a guilty plea to burglary, second degree and wanton endangerment, first degree. Pursuant to the terms of Blacketer's plea agreement, the Hardin Circuit Court sentenced Blacketer to seven years and six months' imprisonment with five years to serve and two years and six months probated on the burglary charge and to five years' imprisonment on the wanton endangerment charge, with the sentences to run concurrently. On April 13, 2004, approximately one month before Blacketer's eighteenth birthday, the Hardin Circuit Court granted his motion to have the remainder of his sentence probated.

In August of 2004, Blacketer was arrested in Anderson County and charged with several offenses. Blacketer entered a guilty plea to second-degree burglary, criminal mischief, driving without insurance, leaving the scene of an accident, and receiving stolen property under \$300 in Anderson Circuit Court. Based on Blacketer's guilty plea, the Commonwealth moved to revoke his probation through the Hardin Circuit Court. Prior to the revocation hearing, Blacketer underwent an evaluation to determine if he was competent to participate in the revocation proceedings.

On March 7, 2006, the Hardin Circuit Court held a competency hearing. The only witness to testify at the hearing, Dr. Williams, stated that his evaluation revealed that Blacketer was competent to participate in the revocation proceedings.

Based on that unrebutted opinion, the Hardin Circuit Court found Blacketer to be competent.

However, the hearing did not end at that point. Blacketer's counsel questioned Dr. Williams about whether Blacketer could have been criminally responsible for the acts he committed in August of 2004 in Anderson County. Dr. Williams testified that Blacketer suffers from a mood disorder, poly-substance dependency, and an anti-social personality disorder. Because of his personality disorder, Blacketer has a predisposition to react aggressively to any perceived threat and a tendency to behave in ways that do not conform to societal norms. The medication prescribed for Blacketer helps him control that predisposition and behavior; however, even without the medication, Blacketer is capable of choosing whether to react aggressively or to conform to societal norms.

Blacketer's counsel specifically asked Dr. Williams if Blacketer would have been able to appreciate the impact of his actions in August of 2004. Dr. Williams stated that he had not evaluated Blacketer in 2004; however, he had a report from Dr. Smith, a physician who had. In his report, Dr. Smith indicated that Blacketer had not been taking his medication for approximately one year. However, Blacketer stated that he believed he was able to control his behavior without his medication. Dr. Smith concluded that Blacketer was competent to stand trial and capable of bearing criminal responsibility for his behavior. Based on his evaluation of Blacketer and his review of the report from Dr. Smith, Dr. Williams testified that he believed that Blacketer was capable of controlling

his behavior when he was not medicated. Furthermore, Dr. Williams testified that Blacketer could choose whether and how to react in a given situation, and that Blacketer would have appreciated that his actions constituted a violation of his probation.

On March 21, 2006, the Hardin Circuit Court held a revocation hearing. During the hearing, the Commonwealth introduced evidence of Blacketer's Anderson County arrest, charges, and guilty plea. No other evidence was introduced and the court entertained oral arguments. In his argument, Blacketer's counsel asked the court to consider Blacketer's mental condition and to deny the motion to revoke probation based on Blacketer's lack of criminal responsibility for the August of 2004 crimes. The Hardin Circuit Court judge indicated that she was aware of Blacketer's history of abuse; however, she noted Blacketer's Anderson County conviction as evidence that probation was not effective and granted the motion to revoke. It is from the Hardin Circuit Court's order revoking probation that Blacketer appeals.

STANDARD OF REVIEW

In an appeal involving a revocation of probation, “our review is limited to a determination of whether, after a hearing, the trial court abused its discretion . . .”

Tiryung v. Commonwealth, 717 S.W.2d 503, 504 (Ky.App. 1986).

ANALYSIS

Blacketer argues that, in August of 2004, he suffered from a mental illness as defined by KRS 504.060(6) and that his mental illness caused him to lack the "substantial capacity either to appreciate the criminality of his conduct or to conform his

conduct to the requirements of law." KRS 504.020(1). Blacketer further argues that, since he suffered from that mental illness when he committed the August 2004 crimes, those crimes cannot be used to revoke his probation. The Commonwealth argues that the defense of insanity is not available to Blacketer because it was not raised in the Anderson County case. Furthermore, the Commonwealth argues that a probation revocation hearing cannot be used to obtain exculpation for criminal conduct to which a defendant entered a guilty plea in another proceeding.

We begin our analysis by noting that the parties have not pointed us to any case law that specifically permits or prohibits the type of challenge to revocation of probation mounted by Blacketer. However, for the reasons set forth below, we do not need to address that issue.

As noted above, Blacketer's substantive argument is that, because of his mental illness and inability to control his behavior without his medication, his 2004 crimes could not be used to revoke his probation. On that issue, and despite Blacketer's assertions to the contrary, Dr. Williams testified that Blacketer could control his behavior even without his medication. Furthermore, Dr. Williams testified that Blacketer knew and would have appreciated that he was violating his probation when he committed the 2004 crimes. Finally, Dr. Williams testified that Blacketer was capable of bearing criminal responsibility for his crimes in 2004. Therefore, even if the revocation hearing was not the appropriate forum to raise an insanity defense, there was more than sufficient evidence to refute that defense.

CONCLUSION

Based on the above, we hold that the Hardin Circuit Court did not abuse its discretion in revoking Blacketer's probation; therefore, we affirm.

ALL CONCUR.

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