

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001587-MR

ADRIAN LONDON

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE ROBERT J. HINES, JUDGE
ACTION NO. 06-CR-00161

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: FORMTEXT LAMBERT AND TAYLOR, JUDGES; HENRY,
SENIOR JUDGE.

TAYLOR, JUDGE: Adrian London brings this appeal from an August 4, 2008,
judgment of the McCracken Circuit Court denying London probation and
sentencing him to fifteen-years' imprisonment. We affirm.

In March 2006, London was indicted as a youthful offender upon
first-degree robbery, kidnapping, three counts of first-degree wanton

endangerment, first-degree fleeing or evading police, receiving stolen property, and operating a motor vehicle without a driver's license. At the time, London was fifteen years old. Pursuant to a plea agreement, London pled guilty to all counts and was sentenced to a total of fifteen-years' imprisonment. London was then committed to the Department of Juvenile Justice for service of his sentence; however, upon attaining the age of majority, London was to be resentenced as an adult.

In 2008, London reached the age of eighteen years. London filed an alternative sentencing plan and specifically requested that his sentence be probated. The court held a hearing. By judgment entered August 4, 2008, the circuit court denied London probation and resentenced London to fifteen-years' imprisonment.¹ This appeal follows.

London argues that the circuit court committed reversible error by denying him probation. London offers several reasons supporting this argument – including, that the court employed a “de facto policy” not to probate youthful offenders of serious crimes and that the court abused its discretion considering the evidence submitted at the hearing. We disagree.

Upon attaining the age of majority, a youthful offender must be returned to the original sentencing court to be resentenced as an adult if any time remains to be served on the sentence. *Com. v. Jeffries*, 95 S.W.3d 60 (Ky. 2002).

At such time, the sentencing court must decide:

¹ Adrian London was given jail-time credit for the time he was in the custody of the Department of Juvenile Justice.

1) whether to place the youthful offender on probation or conditional discharge; 2) whether to return the youthful offender to the Department of Juvenile Justice for six months of additional treatment, followed by discharge; or 3) whether to place the youthful offender in an adult correctional facility.

Id. at 62. However, the decision of the circuit court is purely discretionary and may not be disturbed on appeal absent an abuse of such discretion. *Jeffries*, 95 S.W.3d 60; *Aviles v. Com.*, 17 S.W.3d 534 (Ky. App. 2000).

In denying London probation, the circuit court found that imprisonment was necessary because:

- a) The significant risk [London] will commit another crime;
- b) The [s]erious, dangerous and intentional nature of the offense;
- c) [London] is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; and
- d) A disposition under this Chapter (KRS 533) will unduly depreciate the seriousness of [London's] crime.

We view these as proper bases for denying London probation. Kentucky Revised Statutes (KRS) 533.010. In particular, the court cited the serious nature of London's crimes. The record demonstrates that London's crime involved the intentional use of a firearm against an unarmed victim:

On January 2, 2006, [London] held Thomas Englert at gunpoint with a stolen rifle and stole his car. [London] bound Mr. Englert and locked him in a shed

before fleeing. During his flight [London] sped and struck Officer Krueger's, Montgomery's and Phelps' vehicles. He disregarded traffic laws and endangered the public while driving with no license. The stolen firearm was recovered in the car driven by [London].

In sum, our review reveals no abuse of discretion. Consequently, we hold that the circuit court properly denied London probation.

For the foregoing reasons, the judgment of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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