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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000557-MR

BILLY TAYLOR, JR.

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 03-CR-00056

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, TAYLOR, AND WINE, JUDGES.

WINE, JUDGE: Billy Taylor, Jr. appeals from an order of the Muhlenberg Circuit Court revoking his conditional discharge pursuant to Kentucky Revised Statute (“KRS”) 532.043. Finding no error, we affirm.

On February 3, 2003, a Muhlenberg County grand jury returned an indictment charging Taylor with one count of first-degree rape. KRS 510.040.

Thereafter, Taylor pleaded guilty to one count of the amended charge of second-degree rape. KRS 510.050. In exchange for his plea, the Commonwealth recommended a sentence of five years' imprisonment, which the trial court imposed. In addition to the five year sentence, the trial court imposed an additional three year period of conditional discharge, as required by KRS 532.043.

On February 2, 2008, Taylor served out his sentence and was released from incarceration. Pursuant to the trial court's order, Taylor was required to register as a sex offender and was subject to the three-year period of conditional discharge. On April 28, 2008, Taylor was indicted in Fayette County for failure to comply with sex offender registration. He subsequently pleaded guilty to the charge. Consequently, the Commonwealth moved to revoke Taylor's conditional discharge based on this conviction and his failure to report to his probation officer.

The circuit court held a hearing on the motion on February 23, 2009. Taylor acknowledged his conviction and his failure to report to the probation officer. However, he stated that he had not been told that he was on conditional discharge or about his obligation to report for supervision. The circuit court found that Taylor had violated his conditional discharge and sentenced him to serve the remainder of that period.

Taylor now appeals from the court's order revoking his conditional discharge. We review the circuit court's decision to revoke probation or conditional discharge for abuse of discretion. *Tiryung v. Commonwealth*, 717 S.W.2d 503, 504 (Ky. App. 1986). "The test for abuse of discretion is whether the

trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000).

At the hearing below, Taylor only argued that he had not been told that he was subject to conditional discharge following completion of his sentence. However, the trial court’s judgment clearly states that Taylor would be subject to the three-year conditional discharge upon completion of his sentence or parole. Moreover, KRS 532.043 provides that a person convicted of a qualifying sex offense shall become subject to the period of conditional discharge upon completion of his sentence or parole. This additional period is imposed as a matter of law and is not subject to the trial court’s discretion. *Jones v. Commonwealth*, 200 S.W.3d 495, 496-97 (Ky. App. 2006).

As a result, Taylor was clearly subject to the conditional discharge. Furthermore, his conviction for failure to register as a sex offender constitutes a violation of his conditional discharge. In addition, the Commonwealth introduced the supervision reports stating that Taylor had been informed about his obligation to report to a probation officer. Given the evidence, the trial court had ample basis to revoke his conditional discharge.

Taylor raises several other issues which are not preserved for review. We consider these matters under the palpable error standard of RCr 10.26. A palpable error is one which “affects the substantial rights of a party” and will result in “manifest injustice” if not considered. *Schoenbachler v. Commonwealth*, 95

S.W.3d 830, 836 (Ky. 2003). “Manifest injustice” means that “a substantial possibility exists that the result of the trial would have been different.” *Brock v. Commonwealth*, 947 S.W.2d 24, 28 (Ky. 1997). None of Taylor’s claims of error rise to the level of palpable error.

Taylor first notes that KRS 532.043(5) requires that a violation of conditional discharge must be reported to the Commonwealth Attorney in the county of the conviction. In this case, it appears that the probation officers reported Taylor’s violations directly to the Muhlenberg Circuit Court and not to the Commonwealth Attorney. However, Taylor does not allege how he was prejudiced by any irregularity in this procedure.

We also agree with the Commonwealth that Taylor’s remaining claims are not properly raised in this proceeding. Taylor questions the effectiveness of his trial counsel, stating he was not informed of the period of conditional discharge and noting that the judgment does not clearly show that he was represented by counsel. However, this issue must be brought by way of an RCr 11.42 motion. Taylor also contends that the circuit court failed to grant him proper credit for the time he spent on conditional discharge after serving his sentence. But as the Commonwealth points out, Taylor may bring a motion to correct the judgment to reflect the proper credit. RCr 10.10. The matter is not properly presented in this appeal.

Accordingly, the order of the Muhlenberg Circuit Court revoking Taylor’s conditional discharge is affirmed.

ALL CONCUR.

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