

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-002321-MR  
AND  
NO. 2009-CA-002322-MR  
AND  
NO. 2009-CA-002323-MR

BRANDON STANLEY

APPELLANT

v. APPEAL FROM LETCHER CIRCUIT COURT  
HONORABLE SAMUEL T. WRIGHT III, JUDGE  
ACTION NOS. 08-CR-00026, 08-CR-00155, AND 08-CR-00156

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: KELLER, NICKELL, AND STUMBO, JUDGES.

STUMBO, JUDGE: In this consolidated action, Brandon Stanley appeals from an order of the Letcher Circuit Court sustaining the Commonwealth's motion to revoke his probation. Stanley argues that he was denied due process of law when the Commonwealth failed to provide him with adequate notice of the reasons it

was seeking revocation. We must conclude that Stanley received proper notice of the allegations in support of the Commonwealth's motion to revoke his probation, and accordingly affirm the order on appeal.

The facts are not in dispute. Stanley was arrested on October 27, 2007, and charged with DUI 4<sup>th</sup> Offense, reckless driving and related offenses. He was placed on home incarceration while the charges were pending, and subsequently was charged with Escape in the second degree after allegedly violating the terms of his home incarceration. Stanley pled guilty to the DUI 4<sup>th</sup> offense and related charges, and was sentenced to five years in prison. The sentence was probated for five years. He later pled guilty to the Escape charge and received a two-year sentence, to be probated for five years.

On April 26, 2009, Stanley was charged with Criminal Possession of a Forged Instrument, 1<sup>st</sup> Degree. The charge arose from an incident occurring on April 25, 2009, at the Pine Market gas station in Letcher County, Kentucky. A gas station employee called the Whitesburg police after two individuals attempted to purchase merchandise with a forged \$10 bill. When the clerk realized that the bill was a forgery, one of the two individuals attempted to retrieve the bill from the clerk. The individuals left the gas station before the police arrived, but the incident was captured on videotape.

Around the same time, Officer Tyrone Fields, who had earlier responded to the Pine Market gas station, received an anonymous tip from a citizen who reported that his children had spent the night at the home of Stanley's

girlfriend and overheard a conversation about counterfeit money and had seen counterfeit bills. Officer Fields went to the home of Stanley's girlfriend where he recognized Stanley as being one of the individuals on the videotape. Officer Fields arrested Stanley and charged him with Possession of a Forged Instrument, 1<sup>st</sup> Degree. Stanley's alleged accomplice was also identified.

Thereafter, the Commonwealth filed a motion in Letcher Circuit Court seeking to revoke Stanley's probation. As a basis for the motion, the Commonwealth alleged that Stanley was charged with Possession of a Forged Instrument, 1<sup>st</sup> Degree. The Commonwealth filed a second motion to revoke Stanley's probation on July 9, 2009. In support of the second motion, the Commonwealth again alleged that Stanley was charged with Possession of a Forged Instrument, but also alleged that he violated his probation by associating with a known felon.

A hearing on the first motion was conducted on July 22, 2009, whereupon the court found that Stanley violated the terms of his probation. An amended order was rendered on November 25, 2009, sentencing Stanley to seven years in prison on the underlying charges. The second motion was withdrawn as moot. This appeal followed.

Stanley now argues that he was denied due process of law when he did not receive adequate notice of the Commonwealth's basis for seeking probation revocation. He maintains that the Commonwealth's first motion alleged that he violated the terms of his probation by being arrested for Possession of a Forged

Instrument. He goes on to claim, however, that the basis for the court's revocation was the allegation that he associated with a known felon, namely Louis Hampton – a claim for which he was not given notice. In Stanley's view, since the motion did not raise the issue of his alleged association with Hampton, he was not availed of the opportunity to prepare possible defenses to this argument at the revocation hearing. As such, he contends that he was deprived of due process. He seeks an order vacating the circuit court's order revoking his probation.

We have closely examined the record and the law, and cannot conclude that Stanley was deprived of due process of law arising from the Commonwealth's alleged failure to provide adequate notice of its basis for seeking parole revocation. Stanley's argument centers on his claim that the order revoking his probation was based on the court's determination that Stanley associated with a known felon in violation of the terms of his probation. This claim is refuted by the record. Contrary to Stanley's claim, the Letcher Circuit Court's November 9, 2009 Order of Probation Revocation does not set out as its basis a finding that Stanley associated with a known felon. Rather, the order states in clear and unambiguous terms the finding that Stanley was arrested and indicted on the charge of Criminal Possession of a Forged Instrument, 1<sup>st</sup> Degree. The order makes no mention of Stanley's alleged association with a known felon. While Stanley correctly notes that the issue of his alleged association with a known felon was addressed by the court in the July 22, 2009 hearing, it was not the basis for the court's determination that Stanley violated the terms of his probation.

Proper notice of the alleged grounds for probation revocation must be given in writing prior to the probation revocation hearing. Kentucky Revised Statutes (KRS) 533.050(2); *Rasdon v. Commonwealth*, 701 S.W.2d 716, 717 (Ky. App. 1986). It is uncontroverted that the Commonwealth gave Stanley notice of its intention to assert that Stanley's probation should be revoked based on his arrest and indictment on the charge of Criminal Possession of a Forged Instrument, 1<sup>st</sup> Degree. Additionally, the Commonwealth need only demonstrate by a preponderance of the evidence that Stanley violated the terms of his probation. Officer Fields presented ample and unrebutted testimony at the revocation hearing to support such a finding. This evidence included his testimony regarding the interview he conducted with the clerk of the Pine Market gas station; his examination of the gas station's videotape; the anonymous tip from the citizen who reported that his children overheard a conversation about counterfeit money and saw counterfeit bills at the home of Stanley's girlfriend; and Officer Field's testimony that he recognized Stanley as one of the two individuals on the gas station videotape.

Ultimately, Stanley's claim of a deprivation of due process is refuted by the record. Stanley was given proper notice of the Commonwealth's basis for seeking a revocation of his parole, and this same basis was cited by the court in its order revoking Stanley's probation. Accordingly, we find no error.

For the foregoing reason, we affirm the order of the Letcher Circuit Court revoking Stanley's probation.

ALL CONCUR.

BRIEF FOR APPELLANT:

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