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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001820-MR

ASHLEY FAYE HARMON

APPELLANT

v. APPEAL FROM NICHOLAS CIRCUIT COURT
HONORABLE JAY DELANEY, JUDGE
ACTION NO. 06-CR-00024

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING AND
REMANDING

** ** * * * * *

BEFORE: DIXON, JONES, AND VANMETER, JUDGES.

DIXON, JUDGE: Ashley Faye Harmon appeals from an order of the Nicholas Circuit Court extending her pretrial diversion and denying her motion to designate the charges against her as dismissed-diverted. Because the circuit court was without jurisdiction to extend Harmon's pretrial diversion, we vacate the order and remand this case for further proceedings.

Harmon pled guilty to four counts of receiving stolen property and one count of obscuring the identity of a machine. At the February 5, 2007, sentencing hearing, the court placed Harmon on pretrial diversion for a period of five years. Pursuant to the diversion agreement, Harmon was obligated to pay restitution of \$2239.00, and she was jointly and severally liable for the total amount of restitution, \$8956.00, if her co-defendants failed to pay their respective shares.

On August 9, 2013, the Commonwealth filed a motion to void Harmon's pretrial diversion because her co-defendants had failed to pay their portion of the restitution. In response, Harmon argued her diversion period had expired on February 5, 2012; consequently, she moved the court to enter an order designating the charges dismissed-diverted.

On October 7, 2013, the court denied Harmon's motion because restitution remained unpaid and ordered her to continue inactive supervision with probation and parole. This appeal followed.

Harmon contends the circuit court lacked jurisdiction to extend the diversion period after it had expired in February 2012. The Commonwealth concedes the court's decision was erroneous.

“[T]he trial court has authority to void the diversion agreement, even after the period of diversion has ended, so long as the Commonwealth has entered a timely motion to void prior to expiration of the diversion period.” *Ballard v. Commonwealth*, 320 S.W.3d 69, 74 (Ky. 2010).

Here, it is undisputed that, during the five-year diversion period, the Commonwealth did not move to void Harmon's pretrial diversion. The record plainly indicates that Harmon's five-year diversion period began in February 2007; accordingly, the diversion period expired in February 2012. Approximately eighteen months later, the Commonwealth filed an untimely motion to void the diversion agreement. Since Harmon's term of diversion had already expired, the court was without authority to extend the duration of the diversion period. *See id.*

For the reasons stated herein, we vacate the order of the Nicholas Circuit Court and remand for further proceedings consistent with this opinion.

ALL CONCUR.

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