

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000002-MR

CHRISTOPHER STAMBAUGH

APPELLANT

v.

APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 13-CR-00126

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: DIXON, NICKELL, AND VANMETER, JUDGES.

VANMETER, JUDGE: Christopher Stambaugh (“Stambaugh”) brings this appeal from the Johnson Circuit Court’s final judgment ordering revocation of probation pursuant to KRS 439.3106(1). Stambaugh alleges the trial court abused its discretion by failing to make express findings regarding whether his failure to follow the terms of his supervision constituted a significant risk to prior victims or the community, and whether he could be appropriately managed in the community, as required under the statute. The Commonwealth concedes reversal is required.

Having reviewed the record and applicable law, we reverse and remand for further proceedings consistent with this opinion.

I. Facts

Stambaugh has a long and varied criminal history related to his admitted drug addiction. On April 8, 2014, a judgment and sentence was entered on Stambaugh's plea of guilty to the charges of Fleeing and Evading in the First Degree and Wanton Endangerment in the First Degree.¹ Stambaugh committed those offenses on July 13, 2013. He was sentenced to ten years probated for five years supervised, plus 180 days of home incarceration and continued compliance with the Offender Re-entry Program.

Prior to his April 8th sentencing, Stambaugh had been placed on home incarceration for five months. After final sentencing on April 18, 2014, the Commonwealth moved to revoke Stambaugh's probation, alleging his non-compliance with Community Corrections regulations due to positive tests for use of the controlled substance Suboxone, for which he did not have a prescription. Stambaugh tested positive on March 18, 2014 and April 1, 2014.

A revocation hearing was held on December 5, 2014. Testimony was taken from the director of the Community Corrections center which supervised Stambaugh while he was assigned to the home incarceration program. The director testified to Stambaugh's acts of noncompliance while assigned to Community Corrections, as well as graduated sanctions previously implemented against

¹ The final sentencing hearing occurred on April 4, 2014. The written judgment was entered on April 8, 2014.

Stambaugh. Additional testimony was taken from Stambaugh's current probation officer and from Stambaugh. Stambaugh admitted to violating the requirements of the Community Corrections program and having a long-standing drug addiction. At the conclusion of the hearing, the trial court noted that previous revocation motions had been filed against Stambaugh and previous sanctions against him had not been successful. The trial court entered a written order of revocation on December 29, 2014, remanding him to the Department of Corrections.

II. Standard of Review

The appellate standard of review of a decision to revoke a defendant's probation is whether or not the trial court abused its 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." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

III. Issues and Analysis

KRS 439.3106 became effective June 8, 2011, and was in effect at the time of Stambaugh's probation hearing. The statute, titled, "Sanctions supervised individuals are subject to", provides,

Supervised individuals shall be subject to:

(1) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the

community at large, and cannot be appropriately managed in the community; or
(2) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

Commonwealth v. Andrews, 448 S.W.3d 773 (Ky. 2014) considered the applicability of the newly enacted KRS 439.3106 to revocation proceedings. The Court held:

We conclude that KRS 439.3106(1) requires trial courts to consider whether a probationer's failure to abide by a condition of supervision constitutes a significant risk to prior victims or the community at large, and whether the probationer cannot be managed in the community before probation may be revoked.

Id. at 780. A statute must be read plainly and interpreted so no part is rendered meaningless. *Commonwealth v. Phon*, 17 S.W.3d 106, 108 (Ky. 2000). KRS 439.3106(1) states, on its face, the obligation of a trial court to render decisions on revocation using very specific factors.

We find that *Andrews* is controlling. By its express language, it requires the trial court to consider whether a probationer's failure to abide by a condition of supervision constitutes a significant risk to prior victims or the community at large, and whether the probationer cannot be managed in the community before his probation may be revoked. In revoking Stambaugh's probation, the Johnson Circuit Court did not make sufficient findings as to the essential elements in KRS 439.3106. The Johnson Circuit Court abused its

discretion in revoking Stambaugh's probation and failing to make its decision on the specific criteria in the applicable revocation statute.² Accordingly, this matter is reversed and remanded to the trial court for the issuance of findings consistent with KRS 439.3106.

CONCLUSION

For the foregoing reasons, the revocation order of the Johnson Circuit Court is REVERSED and this matter is REMANDED for proceedings consistent with this opinion.

ALL CONCUR.

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² In fairness to the Johnson Circuit Court, the *Andrews* decision was rendered on December 18, 2014, after the December 5, 2014 revocation hearing and only eleven days before the court entered its order revoking probation.