

RENDERED: May 9, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-1084-MR

RODNEY DANIEL

APPELLANT

v. APPEAL FROM PERRY CIRCUIT COURT
HONORABLE JAMES A. KNIGHT, SPECIAL JUDGE
ACTION NO. 93-CR-46

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

*** *** *** ***

BEFORE: DYCHE, GUIDUGLI, and MILLER, Judges.

MILLER, JUDGE: Rodney Daniel brings this appeal from an April 9, 1996, order of the Perry Circuit Court. We affirm.

In January 1994, appellant entered a plea of guilty to various criminal offenses and, subsequently, was placed upon probation for same. A stipulation of appellant's probation was that he possess no firearms. On October 30, 1995, appellant's probation officer discovered several .22 caliber rifle slugs on appellant's kitchen counter. Thereafter, the probation officer found a .22 caliber rifle under appellant's wife's bed. On

December 20, 1995, a parole violation warrant was issued for appellant. Notice of a preliminary hearing was filed on February 1, 1996. On March 13, 1996, the Commonwealth filed a motion to revoke probation. A revocation hearing was held on March 15, 1996, and an order of revocation was entered April 9, 1996. This appeal followed.

Appellant contends that the circuit court committed reversible error by not dismissing the revocation proceedings pursuant to Ky. Rev. Stat. (KRS) 533.040(3). Specifically, he contends that the proceedings should be dismissed as violative of the ninety-day requirement set forth in that statute. We believe dispositive the case of Sutherland v. Commonwealth, Ky., 910 S.W.2d 235 (1995), wherein the Court ruled that the ninety-day period specified in KRS 533.040(3) is not a statute of limitations for probation revocation. Moreover, we are unable to observe any resulting prejudice to appellant because of the delay in the revocation hearing. As such, we are of the opinion that the circuit court did not commit reversible error by denying appellant's motion to dismiss the revocation proceedings.

Appellant next asserts that the evidence was insufficient to support a revocation. We disagree. Appellant's probation officer testified that she observed .22 caliber rifle slugs on appellant's kitchen counter and, subsequently, found a .22 caliber rifle in the residence. She testified that appellant told her exactly where the firearm was located. Upon the forego-

ing, we think there exists substantive evidence upon which to conclude that appellant was in possession of a firearm.

Finally, appellant maintains he was denied due process of law inasmuch as the circuit court failed to make written findings in its order revoking probation. As appellant failed to make a motion pursuant to Ky. R. Civ. P. 52.04, we believe the court's failure to make written findings has been waived. Ky. R. Crim. P. 13.04; cf. Blankenship v. Commonwealth, Ky. App., 554 S.W.2d 898 (1977).

For the foregoing reasons, the order of the circuit court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Paula Fitzgerald
Louisville, KY

BRIEF FOR APPELLEE:

A. B. Chandler III
Attorney General

Matthew D. Nelson
Assistant Attorney General
Frankfort, KY