

RENDERED: June 20, 1997; 10:00 a.m.  
NOT TO BE PUBLISHED

NO. 96-CA-0703-MR

GREGORY HUDSON

APPELLANT

V. APPEAL FROM PERRY CIRCUIT COURT  
HONORABLE DOUGLAS C. COMBS, JR., JUDGE  
ACTION NO. 93-CR-0103

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, GARDNER and KNOPE, Judges.

GARDNER, JUDGE: Gregory Hudson (Hudson) appeals from an order of the Perry Circuit Court which revoked Hudson's probation and required him to serve the remainder of a criminal sentence. We affirm.

In March 1993, Hudson entered an Alford plea in Perry Circuit Court on the charge of cultivating marijuana, and received a sentence of two years in prison probated for five years. A drug screening conducted on Hudson in late 1994 or early 1995 revealed the presence of controlled substances in Hudson's blood, and the Commonwealth filed a motion seeking to revoke Hudson's probation. Upon considering the motion, the trial court signed an order on

January 18, 1996,<sup>1</sup> amending the first order of probation and requiring Hudson to attend counseling at Kentucky River Community Care (KRCC) and to complete 2,080 hours of community service over four years at the regional animal shelter.

On January 18, 1996, Hudson was advised by his probation officer, Lana Rose (Rose), to attend his first counseling session at KRCC on the morning of January 19, 1996. That same day, Rose left a telephone message with Hudson's mother also advising Hudson to report to the animal shelter to begin community service on January 19, 1996. On January 22, 1996, Rose learned that Hudson failed to attend both the counseling session and the community service, and initiated action to revoke Hudson's probation.

A hearing on the matter was conducted on February 22, 1996, wherein Hudson admitted failing to attend both the counseling session and the community service. He stated that he could not attend the counseling session because his father was ill, and did not receive the message from Rose regarding the time of his community service. He further stated that he did not attempt to contact Rose to advise her of his father's illness or of his inability to attend the counseling session. Upon considering the evidence, the trial judge revoked Hudson's probation and ordered him to serve the remainder of the two-year sentence. This appeal followed.

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<sup>1</sup>The hearing on the motion apparently was rescheduled approximately ten times over the intervening months, thus accounting for the time lapse between the filing of the motion and the hearing on the motion.

Hudson now argues that the trial court committed reversible error in revoking his probation since the alleged violation of the terms of probation was not proven by a preponderance of the evidence. He points to the following in support of the contention that probation revocation was unwarranted: he did not possess telephone service; he did not have a driver's license; his father was ill on the day of the counseling session; he lost the business card given to him by Rose upon which her work and home phone numbers were printed, and he contacted Rose three days after failing to attend the counseling session and community service. We have closely examined Hudson's claim of error, and find no basis for tampering with the order from which he appeals.

Hudson has admitted on the record that he failed to attend the counseling session at KRCC on January 19, 1996, and further that he did not attempt to contact Rose on that date. This failure to comply with the order of probation, taken alone, is a sufficient basis upon which the trial court could properly revoke the order of probation. The Commonwealth need only show by a preponderance of the evidence that Hudson failed to comply with the terms of his probation. Rasdon v. Commonwealth, Ky. App., 701 S.W.2d 716 (1986). It is our conclusion that Hudson's admitted failure to attend the counseling session is clearly sufficient to meet this burden. Nothing more is required. Hudson's subsequent failure to begin serving his community service requirement at the

animal shelter further supports the trial judge's decision to revoke probation.

For the foregoing reasons, the order of the Perry Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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