

RENDERED: June 26, 1998; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 96-CA-3365-MR

JAMES PIKE

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE RAY CORNS, SPECIAL JUDGE
ACTION NO. 93-CR-00051

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

BEFORE: BUCKINGHAM, KNOX, and MILLER, Judges.

BUCKINGHAM, JUDGE. James Pike (Pike) appeals from an order of the Oldham Circuit Court which revoked his probation. For the reasons set forth hereinafter, we affirm.

Pike was charged with forty-four counts of theft. Pursuant to a plea agreement with the Commonwealth, Pike pled guilty to one count of theft by unlawful taking over \$100 and one count of theft by unlawful taking over \$300. He was sentenced to two years of prison on each count to run concurrently, and his sentence was probated for a five-year period on various conditions, including the condition that he make restitution in the amount of \$86,050 to the victim. The restitution payments

were to be made in four installments, with \$25,000 to be paid on or before the date of sentencing and \$20,350 to be paid on the first, second, and third anniversaries of his sentencing. Pike made the first \$25,000 payment on August 4, 1995, and his next installment of \$20,350 was due on August 4, 1996. When Pike failed to make the required payment at that time, the Commonwealth filed a motion to revoke his probation, and a revocation hearing was held. The trial court entered an order revoking Pike's probation for failure to make restitution, and this appeal followed.

In Bearden v. Georgia, 461 U.S. 60, 103 S.Ct. 2064, 76 L.Ed. 2d 221 (1982), the Court held that

. . . in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay. If the probationer willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the court may revoke probation and sentence the defendant to imprisonment within the authorized range of its sentencing authority. If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment. Only if alternative measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. To do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment

Id. at 672-73.

The trial court found that Pike "made no attempts to pay any amount of the first installment as ordered by this Court to the victims in this case." The trial court further found that Pike "has not made a sufficient bona fide effort to acquire the resources to pay restitution." The trial court also stated that Pike's "utter disregard of its Order warrants the revocation of probation in the above-styled case."

The facts indicate that Pike was employed as a truck driver when he was sentenced and put on probation. He was employed in that capacity from August 21, 1995, to June 30, 1996. During that time, his net income was \$18,050.66, none of which was used to pay restitution.

Approximately one month before his restitution payment became due, Pike requested temporary leave from his employment for personal reasons and never returned to work for that employer. Pike had no other employment at that time and was left without any source of income. During the five months between the end of his employment as a truck driver and his revocation hearing on December 2, 1996, Pike started and quit several other jobs. He made no restitution payments on the installment of \$20,350 which was due other than the \$3,000 he offered to pay on the date of the revocation hearing.

Under the facts set forth above, we cannot say that the findings of the trial court were clearly erroneous or that the trial court abused its discretion in revoking Pike's probation. The evidence was sufficient to establish that Pike willfully

refused to pay restitution or failed to make sufficient bona fide efforts to acquire the resources to do so.

Pike also argues that the trial court erred by failing to consider alternatives to confinement. See Clayborn v. Commonwealth, Ky. App., 701 S.W.2d 413 (1985). To the contrary, the record indicates that alternatives were proposed to the trial court but were rejected. Although the trial court did not specifically state why it rejected the alternatives to incarceration, it was not required to do so. Black v. Romano, 471 U.S. 606, 105 S.Ct. 2254, 85 L.Ed.2d 636 (1985). In light of the large amount of money stolen by Pike which remained unpaid to the victim and in light of the Commonwealth's interest in punishment and deterrence, we cannot say that the trial court abused its discretion in rejecting alternatives to incarceration.

The order of the Oldham Circuit Court revoking Pike's probation is affirmed.

KNOX, JUDGE, CONCURS.

MILLER, JUDGE, DISSENTS WITHOUT OPINION.

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