

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-002485-MR

DENNIE GILLESPIE

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 94-CR-195 & 94-CR-215

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, EMBERTON AND GARDNER, JUDGES.

GARDNER, JUDGE: Dennie Gillespie (Gillespie) appeals from an order of the Pike Circuit Court revoking his probation. On appeal, he argues that the circuit court erroneously admitted a drug analysis report in violation of minimum due process requirements. After reviewing the record, we have found no error. Thus, this Court affirms.

In September 1995, Gillespie entered into a guilty plea agreement with the Commonwealth wherein he pled guilty to theft by unlawful taking over \$100 and misdemeanor nonsupport. The Commonwealth agreed to recommend one year on the felony, probated for two years on the following conditions: (a) that Gillespie pay

restitution of his \$9,461 child support arrearage within twelve months, plus make current support payments; and (b) that Gillespie comply with all other terms and conditions of probation. The court accepted Gillespie's plea. The court sentenced Gillespie to a total of one year, with the sentence probated for two years. The court imposed the following probation conditions: (1) that Gillespie commit no other offenses; (2) avoid injurious or vicious habits; (3) avoid persons or places of disreputable or harmful character; (4) work faithfully at suitable employment; (5) pay child support arrearage within twelve months; (6) pay court costs; and (7) make current monthly support payments.

In February 1996, the Commonwealth moved to revoke Gillespie's probation for failure to report to his probation officer. In March 1996, it amended the motion to revoke, also asserting that Gillespie failed to make payments on his support arrearage or current support payments. A hearing was scheduled for March 22, 1996, but Gillespie failed to appear. In September 1996, the Division of Probation and Parole (the division) reported to the circuit court that Gillespie had tested positive for marijuana. In November 1996, the division reported that Gillespie failed to report to his probation officer on two occasions; failed to comply with substance abuse treatment; and failed to pay his nonsupport arrearage, court costs and probation supervision fees. At the request of Gillespie's probation officer, the Commonwealth filed a motion to revoke in November 1996. In July 1997, Gillespie's probation officer reported that

he had moved from his known address without permission, leaving no forwarding address. The Commonwealth filed an amended notice to revoke probation in August 1997.

In September 1997, the trial court conducted a revocation hearing. At the hearing, the Commonwealth through Gillespie's probation officer, presented the analysis from a commercial laboratory showing that Gillespie tested positive for marijuana. Evidence was presented regarding Gillespie's failures to report to his probation officer, for drug abuse treatment and his failure to make child support and arrearage payments, and his failure to pay court costs and supervision fees. After hearing the evidence, the circuit court revoked Gillespie's probation. The court found that Gillespie had violated his probation by (1) using marijuana; (2) failing to report; (3) failing to comply with substance abuse treatment; (4) failing to pay nonsupport, costs and supervision fees, (5) moving without permission; and (6) absconding supervision. Gillespie has subsequently filed this appeal.

Gillespie solely argues on appeal that the admission of the drug analysis report did not satisfy minimal due process requirements. He contends that the Commonwealth was not required to present authenticating documents or a witness from the testing company regarding the report. We have uncovered no error.

Under Kentucky Revised Statute (KRS) 533.050(2), a court may only revoke or modify a conditional discharge after a hearing with the defendant represented by counsel and following a written notice of the grounds for revocation. Rasdon v.

Commonwealth, Ky. App., 701 S.W.2d 716, 717 (1986). Revocation hearings must be conducted in accordance with minimum requirements of due process of law. Id., at 718, citing Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973). A defendant must be provided the following minimum due process rights: (1) written notice of the claimed probation violations, (2) disclosure of the evidence to be used against the defendant, (3) opportunity to be heard in person and to present witnesses and documentary evidence, (4) the right to confront and cross-examine adverse witnesses, (5) a neutral and detached hearing body, and (6) a written statement by the factfinder as to the evidence relied on and the reasons for revoking parole. Marshall v. Commonwealth, Ky. App., 551 S.W.2d 838, 840 (1977), citing Gagnon v. Scarpelli, 93 S.Ct. at 1761-62; Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). The procedure should be flexible enough to consider evidence including letters, affidavits and other material that would not be admissible in an adversary criminal trial. Marshall v. Commonwealth, 638 S.W.2d at 289, quoting Morrissey v. Brewer, 92 S.Ct. at 2604. Whether a circuit court revoke upon one violation or three is of no consequence to the defendant so long as the evidence supports at least one violation. Messer v. Commonwealth, Ky. App., 754 S.W.2d 872, 873 (1988).

Gillespie has failed to show any reversible error in the case at bar. The urinalysis sample was submitted to a professional laboratory through proper custody procedures. Gillespie through counsel was afforded the opportunity to

question witnesses regarding the test, the chain of custody and the result. He has shown no infringement on the minimum due process rights he is provided at such hearings. Further, evidence was presented regarding other violations of probation conditions including failure to pay current child support and his arrearage, failure to pay probation supervision fees, failure to report to his probation officer and failure to inform his probation officer of his new address.

For the foregoing reasons, this Court affirms the order of the Pike Circuit Court.

ALL CONCUR.

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