

RENDERED JULY 9, 1999; 2:00 P.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court Of Appeals**

NO. 1998-CA-001215-MR

PAUL W. SHELTON

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE JAMES E. HIGGINS, JR., JUDGE  
ACTION NO. 97-CR-00540

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: DYCHE, GUIDUGLI, JOHNSON, JUDGES.

JOHNSON, JUDGE: Paul W. Shelton (Shelton) appeals from an order of the Christian Circuit Court entered on May 12, 1998, revoking the probation of his sentence for Wanton Endangerment in the First Degree (Kentucky Revised Statutes (KRS) 508.060). After reviewing the record, the arguments of the parties and the applicable law, we affirm.

On December 15, 1997, Shelton was charged with Wanton Endangerment in the First Degree and Disorderly Conduct (KRS

525.060). Shelton reached a plea agreement with the Commonwealth wherein the Commonwealth recommended that he receive a five-year prison sentence on the wanton endangerment charge; a thirty-day jail sentence on the disorderly conduct charge; and that both sentences be probated for five years. Shelton pled guilty and on March 6, 1998, the Christian Circuit Court sentenced him in accordance with the Commonwealth's recommendations.

Four days later, on March 10, 1998, the Commonwealth moved the trial court to revoke Shelton's probation on the grounds that he had violated the conditions of his probation by failing to have "continued good behavior", and by not refraining "from violating the law in any respect". The Commonwealth specifically asserted that Shelton had "violated the aforesaid conditions by being involved in the [b]urglary<sup>1</sup> of Duke's Pawn Shop and the [m]urder of Dale Robertson, committed on or about March 7, 1998." (emphasis added).

The Commonwealth called two witnesses at the revocation hearing. One of the witnesses, Detective Richard Liebe (Detective Liebe), testified that on March 7, 1998, he interviewed Shelton regarding the robbery and murder of Robertson. Detective Liebe testified that during the interview Shelton admitted to tampering with physical evidence, conspiring

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<sup>1</sup> While the Commonwealth's motion referred to the crime of burglary, the evidence at the hearing and the subsequent indictment of Shelton returned on May 15, 1998, indicated that the crime at issue involved the robbery of Robertson and not the burglary of Duke's.

to commit robbery and receiving stolen property. The Commonwealth also presented testimony from Shelton's probation officer as to the terms and conditions of his probation.

Shelton presented no defense to the Commonwealth's proof and his attorney's only statement concerning Shelton's admissions as testified to by Detective Liebe was "all I had notice of was that the defendant was involved in a burglary. I didn't know anything about these charges." By an order entered on May 12, 1998, the trial court revoked Shelton's probation.<sup>2</sup> This appeal followed.

Shelton claims that Detective Liebe's testimony at the revocation hearing did not concern his alleged involvement in the burglary of Duke's or the murder of Robertson. He further alleges that the motion to revoke his probation "concerned entirely different crimes" than the crimes about which Detective Liebe testified at the revocation hearing, e.g. tampering with physical evidence, conspiring to commit robbery and knowingly receiving stolen property. Thus, Shelton claims the Commonwealth violated the notice requirement of KRS 533.050(2).

KRS 533.050(2) provides as follows: "The court may not revoke or modify the conditions of a sentence of probation or conditional discharge except after a hearing with defendant represented by counsel and following a written notice of the

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<sup>2</sup> The court order revoking probation found that Shelton had "made a statement on 3-8-98 [as] to his involvement in criminal activity [the result of] which he [is] charged with Complicity to Murder; First Degree Robbery; Tampering with Physical Evidence and Knowingly Receiving Stolen Property".

grounds for revocation or modification." Shelton relies specifically on Rasdon v. Commonwealth, Ky.App., 701 S.W.2d 716 (1986), to support his contentions that he was deprived of due process of law. However, Rasdon is distinguishable from this case in that the ground upon which Rasdon's probation was revoked was "association with a person of disreputable character". In Rasdon, this Court held that the Commonwealth did not give "notice that this would be one of the grounds for violation and revocation. [Rasdon] was forced into a challenge of the credibility of the absent witness which proved her to be a disreputable character." Id. at 719.

By contrast, in the case sub judice, Shelton was given notice that his involvement in the burglary of Duke's and the murder of Robertson were the grounds for the Commonwealth's motion to revoke his probation. While Shelton did not admit that he burglarized Duke's or murdered Robertson, he did admit to being 'involved' in these crimes by tampering with physical evidence, conspiring in the robbery of Robertson and knowingly receiving stolen property from the robbery. The Commonwealth did not state in its motion to revoke probation that Shelton had 'committed' burglary and murder, but rather it stated specifically that "Defendant has violated the aforesaid conditions by being involved in the [b]urglary of Duke's Pawn Shop and the [m]urder of Dale Robertson, committed on or about March 7, 1998." (emphasis added). Thus, Shelton should have been fully aware that his admissions to Detective Liebe that he was involved in

these crimes would be the focus of the Commonwealth's motion to revoke his probation.

This Court has held that:

"[Appellant's] constitutional rights are protected when revocation is being considered if (1) a written notice of claimed violations. . . are served, (2) a disclosure of the evidence to be used is made, (3) an opportunity is granted to be heard in person, present witnesses and documentary evidence, (4) confrontation and cross-examination of witnesses is afforded (unless a specific finding for good cause is made to the contrary), (5) a neutral detached hearing body conducts the procedure, and (6) a written statement is made by the fact-finder(s) as to the evidence relied upon and the reasons for revoking parole. We see no distinction between probation and parole because Gagnon deals with the former, while Morrissey the latter."

Baumgardner v. Commonwealth, Ky.App., 687 S.W.2d 560, 561 (1985), quoting Judge Lester in Murphy v. Commonwealth, Ky.App., 551 S.W.2d 838 (1977), citing, Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), and Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973).

We hold that the Commonwealth has met the standards set by the United States Supreme Court, in Morrissey and Gagnon, and adopted by this Court, in Baumgardner and Murphy, and that Shelton received the constitutional protections to which he was entitled. Shelton's claim that the Commonwealth's notice was ineffective and deprived him of his right to due process of law is totally without merit. Rather, the record clearly indicates that the Commonwealth met the constitutional requirements by

taking the following actions: (1) Shelton was provided with a written notice of the violations, (2) the only evidence introduced against Shelton consisted of his voluntary admissions, (3) Shelton was allowed at the hearing to speak and to present witnesses and documentary evidence, and (4) Shelton was allowed to cross-examine the witnesses if he so chose. See Gagnon, supra.

For the foregoing reasons, we affirm the order of the Christian Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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