

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-002797-MR

JEFFREY L. HEBEL

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE LEWIS B. HOPPER, JUDGE  
ACTION NO. 97-CR-00139

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: GUIDUGLI, JOHNSON AND KNOPF, JUDGES.

GUIDUGLI, JUDGE. Jeffrey L. Hebel (Hebel) appeals from a final judgment which determined that he was not eligible for probation or conditional discharge and sentenced him to serve ten years on convictions for criminal conspiracy to commit murder and criminal conspiracy to commit robbery in the first degree. We find no abuse of discretion and therefore affirm.

Hebel was charged with two counts of criminal conspiracy to commit murder, two counts of criminal conspiracy to commit robbery in the first degree, and one count of assault in the first degree involving an incident in which several other

juveniles robbed his parents' home and cut his step-father's throat with a knife. Hebel was sixteen at the time of the offense, June 4, 1997. After his arrest he was held in a juvenile detention facility. On August 5, 1997, after a hearing in compliance with KRS 630.020(2), the district court transferred Hebel's case to the Laurel Circuit Court for proceedings consistent with the Youthful Offender Statute (KRS 640.010). In other words, he was to be treated as an adult.

After discovery was completed and the matter set for trial, Hebel accepted the Commonwealth's plea agreement offer and entered a guilty plea to the two charges with the remaining charges being dismissed. The Commonwealth recommended a ten year sentence and agreed to remain silent as to probation when Hebel was returned to court for final sentencing when he reached eighteen years of age. The trial court accepted the guilty plea on May 14, 1998, and Hebel was sentenced on May 26, 1998. At that time Hebel was sentenced to ten years on each offense with the time running concurrently. Since he was still a juvenile he was committed to the Department of Juvenile Justice (DJJ) until he turned eighteen, at which time he would be returned to court for final sentencing.

Hebel turned eighteen on August 10, 1998, and was returned to court for sentencing on August 24, 1998. At that time the court determined that he was not eligible for probation or conditional discharge due to the following: (1) the risk he would commit another crime during any period of probation; (2) that he was in need of correctional treatment; and, (3) that

probation would unduly depreciate the seriousness of the crime. However, the court did recommit him to DJJ until he reached the age of nineteen. This commitment was short-lived as the court was soon advised that DJJ would not hold Hebel until his nineteenth birthday. He was then brought back to court for another re-sentencing hearing. At the hearing on October 26, 1998, the trial court again denied probation based upon the same three factors mentioned above and recommitted Hebel to DJJ until January 25, 1999, in order for him to complete high school while in the DJJ program. However, the court was again advised soon thereafter that DJJ would not hold Hebel but could and might release him from commitment at any time. Based upon this information, the trial court scheduled a new sentencing hearing on November 2, 1998. At this final sentencing hearing the trial court again denied Hebel probation or conditional discharge and sentenced him to ten years in the state penitentiary. This appeal followed.

On appeal, Hebel contends that the trial court refused to consider probation in this matter or in the alternative, he argues the trial court abused its discretion when it denied him probation. We do not agree with either contention. At each of the three sentencing hearings scheduled after Hebel turned eighteen years of age, the trial court considered an alternative commitment to DJJ under KRS 640.030 for a period of time as recommended by DJJ, so that Hebel could receive the maximum benefits under the juvenile code. Also, at each of the hearings the trial court verbally expressed its concerns as to the

seriousness of the criminal offenses and the fact that they involved Hebel's parents. Additionally, in each of the three written orders following these hearings, the court noted imprisonment was necessary for the protection of the public because:

- A. There is substantial risk that defendant will commit another crime during any period of probation, probation with an alternative sentencing plan, or conditional discharge.
- B. the defendant is in the need of correctional treatment that can be provided most effectively by the defendant's commitment to a correctional institution.
- C. probation, probation with an alternative sentencing plan, or conditional discharge would unduly depreciate the seriousness of the defendant's crime.

Hebel's argument that the trial court articulated a de facto court policy not to consider probation where a defendant has been found guilty of conspiracy to commit murder and conspiracy to commit robbery, first degree, is unfounded and meritless. So is his contention that the trial court abused its discretion in not granting probation in the case. Hebel affirmatively acknowledged his participation in the conspiracy to rob and kill his parents. One can hardly conceive of a crime more treacherous, violent and dangerous in nature. The trial court recognized the seriousness of the crime and the necessity for treatment and punishment by ordering Hebel to be incarcerated and serve his sentence for such crimes.

The determination by the trial court to grant probation or conditional discharge is discretionary. Brewer v. Commonwealth,

Ky., 550 S.W.2d 474 (1977). In this case the trial court determined that Hegel was not entitled to probation. This decision was based on the seriousness of the offense, Hebel's need for treatment and punishment, and the court's concern that Hebel might commit additional crimes. We find no abuse of discretion in these conclusions based upon the facts presented. Based upon the foregoing reasons the trial court's decision must be affirmed as a permissible exercise of its discretion.

ALL CONCUR.

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