

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-002434-MR

TERRY BRANSCUM

APPELLANT

v. APPEAL FROM WAYNE CIRCUIT COURT  
HONORABLE PAUL BARRY JONES, SPECIAL JUDGE  
ACTION NO. 99-CR-00018

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: COMBS, JOHNSON, and SCHRODER, Judges.

COMBS, JUDGE: Terry Branscum appeals from an order of the Wayne Circuit Court revoking his probation and sentencing him to serve eight years in prison on a conviction for burglary in the second degree. Finding no abuse of discretion by the trial court, we affirm.

On March 16, 1999, Branscum was indicted on the offense of robbery in the first degree. On September 7, 1999, he pled guilty to an amended charge of burglary in the second degree Kentucky Revised Statutes (KRS) 511.030. Pursuant to the plea agreement, Branscum was sentenced to a term of eight years, 180 days of which he was required to serve; the remaining portion of

the sentence was probated. In addition to the usual terms of probation, the trial court imposed the specific conditions that Branscum attend substance abuse counseling and that he submit to random drug and alcohol testing.

After Branscum had served six months of incarceration, he was placed under the active supervision of Doug Perkins, Officer of the Division of Probation and Parole. On August 31, 2000, the Commonwealth moved to revoke Branscum's probation for the following reasons:

1. Branscum's failure to cooperate with Perkins as evidenced by his dilution of a urine sample collected for testing for the presence of drugs;
2. his failure to attend all counseling sessions; and,
3. his use of a drug for which he did not have a prescription as evidenced by a drug test.

Following a hearing on the motion, the trial court found that Branscum had violated three conditions of his probation. It revoked his probation and ordered him to serve the remaining portion of his eight-year sentence. This appeal followed.

Branscum's sole argument on appeal is that the evidence presented by the Commonwealth was not sufficient to support the trial court's findings that he had violated the terms of his probation. In order to revoke probation, the Commonwealth must prove a violation of one of the conditions of probation by a preponderance of the evidence. Rasdon v. Commonwealth, Ky.App., 701 S.W.2d 716, 719 (1986). Our review of the record reveals

that the Commonwealth presented sufficient evidence to satisfy that standard with respect to all three of the alleged violations.

The Commonwealth presented evidence that a urine sample obtained from Branscum on July 12, 2000, was not capable of being screened for drugs as it had been diluted. Perkins testified that he witnessed Branscum provide the urine sample and did not see him alter it in any way. However, he also testified to events from which the trial court could infer that Branscum, suspecting he would be asked to submit to a urine test, had consumed large quantities of water to cause his urine to be diluted. Branscum did admit to drinking a lot of water prior to the test – purportedly to help him lose weight. The trial court was not required to accept Branscum's explanation for the sample's dilution and elected to believe the contrary.

Furthermore, Branscum's own testimony corroborated Perkins's claim that he failed to attend several counseling sessions in July 2000. Branscum attributed this failure to a conflict with his schedule at work. According to Perkins, this was not the first time he had cautioned Branscum about the consequences for failing to attend counseling.

Finally, a lab report introduced into evidence revealed that a urine specimen obtained from Branscum on July 19, 2000, tested positive for Oxazepam, a Schedule IV depressant, typically prescribed for the treatment of anxiety. Branscum admitted that he had no prescription for the drug. Nor did he have an explanation for the presence of this drug in his system.

The trial court has broad discretion to revoke the conditional grant of probation. Tiryung v. Commonwealth, Ky.App., 717 S.W.2d 503, 504 (1986). It may revoke probation for one or several violations where "the evidence supports at least one violation." Messer v. Commonwealth, Ky.App., 754 S.W.2d 872, 873 (1988). Thus, even if the trial court had accepted Branscum's explanation for the diluted urine sample and his excuse for the missed counseling sessions, his inappropriate use of Oxazepam was sufficient by itself to justify the revocation of his probation. The evidence presented at the hearing, including Branscum's own admissions, was more than sufficient to support the trial court's order of revocation. We find no abuse of discretion.

The judgment of the Wayne Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kimberly Brooks  
Covington, KY

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General of Kentucky

Brian T. Judy  
Assistant Attorney General  
Frankfort, KY