

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-002097-MR

BENJAMIN GARFINKLE

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE WILLIAM J. WEHR, JUDGE  
ACTION NO. 99-CR-00402

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: KNOPF, MILLER, AND TACKETT, JUDGES.

MILLER, JUDGE: Benjamin Garfinkle brings this appeal from an August 23, 2001 order of the Campbell Circuit Court. We affirm.

On May 21, 1991, Garfinkle was convicted on various felony charges. He was paroled in November of 1996. On December 20, 1999, Garfinkle entered a plea of guilty to a charge of custodial interference. Kentucky Revised Statutes (KRS) 509.070. On February 10, 2000, he was sentenced to two and a half years' imprisonment. His sentence was probated for five years on condition of no further violation of conditions and/or no new arrests or charges.

In January 2001, Garfinkle inquired of his parole officer, Michelle Kelley, about leaving his area of supervision for a trip to Mexico. Kelley agreed to provide him with the required written permission, which Garfinkle was required to have on his person at time of travel.

On February 7, 2001, Garfinkle submitted to a mandatory random drug test. Initial results indicated Garfinkle had cocaine in his system. The specimen was sent for a second test.

On February 9, 2001, Kelley prepared Garfinkle's written permission to leave his area of supervision and left it at the parole office. Though Garfinkle failed to pick it up, he nonetheless traveled to Mexico. Kelley visited Garfinkle's home on or about February 20, 2001, and verified Garfinkle had indeed traveled without the required permission. Sometime thereafter, the second drug test returned, again indicating a positive result for cocaine.

On July 27, 2001, Garfinkle was arrested for parole violations based upon the positive lab results, and leaving his area of supervision without written permission. The Commonwealth moved to revoke Garfinkle's probation. Following a hearing, Garfinkle's probation was revoked by order of the Campbell Circuit Court dated August 23, 2001. This appeal followed.

Garfinkle contends the circuit court erred in granting the Commonwealth's motion for revocation of his probation. Garfinkle points out that his parole officer did not follow the Ky. Admin. Regs. (KAR) concerning his travel to Mexico. Specifically, Garfinkle asserts that his parole officer did not

promptly notify the circuit court of Garfinkle's travel violation until some five months after she became aware of it. In support of his argument, Garfinkle cites us Kentucky Corrections Policies and Procedures 27-15-01, which reads in pertinent part:

All arrests and violations of supervised offenders shall be investigated immediately and all arrests and major violations shall be reported promptly to the releasing authority. (Emphases added).

We note that Kentucky Corrections Policies and Procedures 27-15-01 is incorporated by reference into 501 KAR 6:020E.

Garfinkle cites us to no authority concerning what constitutes "promptly." Neither does he cite us to any authority that sets out the remedy for not "promptly" reporting a violation. In any event, we do not believe the remedy would be denial of the Commonwealth's motion to revoke probation. We also observe the KAR requires prompt reporting of any "major violations." Garfinkle does not indicate to us whether his travel without permission constitutes a "major violation." Upon the whole, we think Garfinkle's trip to Mexico was a clear violation of his probation. We perceive no merit in Garfinkle's claim the government failed to follow the mandates of 501 KAR 6:020.

Garfinkle also makes various arguments concerning his mandatory drug test. The trip to Mexico without the required written permission of his parole officer is alone sufficient grounds to revoke his probation; thus, we deem these assignments of error moot.

In sum, we are of the opinion the circuit court properly revoked Garfinkle's probation.

For the foregoing reasons, the order of the Campbell Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

L. Craig Kendrick  
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BRIEF FOR APPELLEE:

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