

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001778-MR

ROBERT A. COX

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN P. RYAN, JUDGE  
ACTION NO. 96-CR-002397

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, GUDGEL, AND KNOFF, JUDGES.

KNOFF, JUDGE: Robert A. Cox appeals from a July 20, 2001, order of the Jefferson Circuit Court which revoked his probation. He contends that his case was improperly transferred to another division of the Jefferson Circuit Court, and that the trial judge who ruled on the motion to revoke lacked the authority to conduct the revocation hearing. We find that Cox had previously agreed to the transfer of his case to the supervision of the drug court program, and in so doing he waived any objection to the disposition by another circuit judge of a motion to revoke his probation. Hence, we affirm.

The underlying facts of this action are not in dispute. In 1996, the Jefferson County grand jury indicted Cox on the charges of trafficking in a controlled substance (cocaine),<sup>1</sup> and tampering with physical evidence.<sup>2</sup> That action was assigned to Division Nine of the Jefferson Circuit Court. Thereafter, Cox entered a guilty plea to the charges pursuant to Alford v. North Carolina.<sup>3</sup> Based upon the Commonwealth's recommendation, the trial court sentenced Cox to five years' imprisonment, but it also ordered that the sentence be probated.

In March of 1998, the trial court revoked Cox's probation on his own motion. Several months later, the court granted his motion for shock probation. In November of 1998, the Commonwealth moved to revoke Cox's probation. Following a hearing, the trial court denied the motion to revoke, but it directed that Cox present himself for assessment by the drug court program. However, Cox failed to meet the requirements for participation in that program. By order entered on February 13, 2001, the drug court ordered that Cox's case be transferred to Division Six of the Jefferson Circuit Court for further proceedings.

The Commonwealth then renewed its prior motion to revoke Cox's probation. At a hearing conducted on July 20, 2001, Cox's counsel asked the court why the case had been transferred to Division Six rather than to Division Nine. The trial judge

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<sup>1</sup> KRS 218A.1412.

<sup>2</sup> KRS 524.100.

<sup>3</sup> 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

explained that the general term of the Jefferson Circuit Court and the drug court had decided that consistency in disposition was important in matters involving revocation of probation. Since he was the designated circuit court judge for drug court, the trial judge stated that disposition of the motion to revoke now fell to him. Consequently, the court overruled Cox's motion to transfer his case back to Division Nine.

Thereafter, Cox stipulated to the contents of the special supervision report and to the violations alleged therein. After hearing evidence and arguments of counsel, the trial court found that Cox had failed to comply with the conditions of his probation, and it ordered his probation be revoked. This appeal followed.

Cox does not challenge the trial court's decision to revoke his probation. Rather, he argues that the motion to revoke was not properly before Division Six of the Jefferson Circuit Court. SCR 1.040(4)(c) requires that:

[i]n the absence of good cause to the contrary, all matters connected with a pending or supplemental proceeding shall be heard by the judge to whom the proceeding was originally assigned.

The Supreme Court has assigned to the chief judge of the judicial circuit the exclusive authority to assign cases to the judges of the circuit.<sup>4</sup> Cox asserts that the general term of the circuit court cannot make rules regarding the re-assignment of cases. Because the chief judge of the Jefferson Circuit Court did not authorize transfer of his case, Cox asserts that the judge of

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<sup>4</sup> SCR 1.040(3)(c).

Division Six lacked the authority to revoke his probation. He further argues that his case could only be transferred to another division for good cause based upon the facts of his particular case, and not through a general administrative order.

Cox raises a novel question involving the application of SCR 1.040 to defendants transferred into the drug court program. However, the issue is ultimately moot due to the nature of the program. Kentucky's first drug court was established in Jefferson County in 1993. The drug court is a diversion program involving non-violent offenders who are charged with drug-related crimes. Participants must undergo treatment and counseling, submit to frequent and random drug testing, and make regular appearances before a drug court judge. Defendants are monitored closely for program compliance and are sanctioned for violations of the program.<sup>5</sup> As with the family court project, drug court is not a new court. Rather, judges are assigned to oversee specialized divisions of circuit and district court. The Administrative Office of the Courts trains local court personnel to manage the program. However, the district and circuit judges are in charge of disposition of cases assigned to the divisions.

In Jefferson County, a district judge monitors the defendants' compliance with the program. However, since only a circuit judge has the authority to revoke probation on a felony conviction, any participants who fail to meet the requirements of the program are transferred to the circuit court division of drug

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<sup>5</sup> See Administrative Office of the Courts publication, "Procedures Manual - Kentucky's Drug Court", <[http://www.kycourts.net/AOC/drugcourt/AOC\\_DC\\_ProManual.pdf](http://www.kycourts.net/AOC/drugcourt/AOC_DC_ProManual.pdf)> (Accessed July 8, 2002).

court. By agreeing to participate in the drug court program as an additional condition of his probation, Cox implicitly accepted the transfer of his case to the supervision of the drug court divisions, both district and circuit. Hence, we conclude that Cox waived any objection to the transfer of his case.

Accordingly, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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