

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001660-MR

BRANDON HUNTER

APPELLANT

v. APPEAL FROM HICKMAN CIRCUIT COURT
HONORABLE WILLIAM LEWIS SHADOAN, JUDGE
ACTION NO. 01-CR-00008

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, GUIDUGLI and SCHRODER, JUDGES.

BUCKINGHAM, JUDGE: Brandon Hunter appeals from an order of the Hickman Circuit Court revoking his probation. We affirm.

On August 2, 2001, Hunter was sentenced to ten years in prison for the criminal offenses of trafficking in marijuana, possession of a controlled substance, and possession of drug paraphernalia. However, the sentence was probated for a five-year period under numerous conditions. These conditions included that Hunter work faithfully at suitable employment as

far as possible, undergo available medical or psychiatric treatment as directed by the probation officer (including substance abuse evaluation), promptly notify the probation officer of any change in employment, pay a probation supervision fee of \$30 per month, and be subject to electronic monitoring at his expense.

On January 4, 2002, Hunter appeared before the circuit court for a probation revocation hearing. It was alleged by the probation officer that Hunter had failed to cooperate in carrying out the supervision plan and had numerous violations with electronic monitoring. Following the hearing, the court ordered Hunter to be incarcerated in jail until such time as he could complete the "Scared Straight" program. Further, the court ordered that Hunter be refitted with the electronic monitoring device following his release and that he have full employment within ten days of his reporting to the probation officer on the day that he completed the "Scared Straight" program.

On July 2, 2002, a bench warrant was issued for Hunter's arrest for violating the terms and conditions of his probation. Hunter was arrested and given written notice of the following alleged violations: failure to attend treatment for substance abuse, failure to secure employment within ten days as

directed by the court, failure to pay probation supervision fee, and failure to pay expenses for electronic monitoring.

A probation revocation hearing was held on July 18, 2002. At the hearing, the court reviewed the alleged violations and considered statements by Hunter and by the probation officer. Concerning the alleged violation that he failed to attend treatment for substance abuse, it was established that Hunter attended an appointment on February 6, 2002, but failed to attend a scheduled appointment at Four Rivers Mental Health on February 14, 2002. Hunter responded that he did not attend the appointment because he was working.

Concerning the alleged violation that he had failed to secure employment within ten days of his earlier release as directed by the court and that he was currently unemployed, Hunter stated that he had been employed at several different places since being released. The probation officer responded that Hunter had been hired for several jobs but had held them for only short periods of time before quitting.

Concerning his failure to pay the probation supervision fee, it was alleged that Hunter had paid no fees since his probation began and that he owed \$270. Concerning his failure to pay the expenses for electronic monitoring, it was alleged that Hunter had paid only \$220 of the \$1,080 owed. In response, Hunter stated that he was unable to make the payments

due to having to support a child and having to make car payments.

Near the end of the probation revocation hearing, it was brought to the attention of the circuit court that Hunter had resisted arrest while being served with the bench warrant for probation violations. The court subsequently revoked Hunter's probation, and Hunter was remanded to custody to serve the ten-year sentence. This appeal by Hunter followed.

Our review of the probation revocation decision by the circuit court is limited to determining whether the trial court abused its discretion. Tiryung v. Commonwealth, Ky. App., 717 S.W.2d 503, 504 (1986). However, it must first be determined that Hunter violated the conditions of probation before we determine whether the court abused its discretion in revoking it. See Keith v. Commonwealth, Ky. App., 689 S.W.2d 613, 615 (1985).

Hunter's first argument is that the circuit court abused its discretion and violated his due process rights when it revoked his probation based on reasons that were not contained in the notice provided to him. Hunter alleges that the court acted, at least in part, on the information that he had resisted arrest in deciding to revoke his probation and that he was not given notice that this reason would be considered by the court in making its decision.

The order revoking Hunter's probation stated that the court found "the defendant has violated the terms of his/her probation by committing other offenses and/or failure to comply with the terms of his/her Probation Order." The court had grounds to revoke Hunter's probation due to his failure to maintain employment, his failure to attend treatment, and his failure to pay probation supervision fees and the electronic monitoring expenses. Whether the trial court revoked upon one of these violations or all of them is of no consequence as long as there were grounds to revoke on at least one violation. See Messer v. Commonwealth, Ky. App., 754 S.W.2d 872, 873 (1988). We fail to perceive any abuse of discretion by the court even though it may have been aware of the resisting arrest incident that was not listed as an alleged violation.

Hunter's second argument is that the circuit court abused its discretion by revoking his probation even though he had substantially complied with its conditions to the extent he was able. He asserts that the court abused its discretion in revoking him for failure to attend substance abuse treatment when he was only required to be evaluated rather than treated. He further contends that it was an abuse of discretion to revoke his probation because his personal obligations concerning his child and his car payments made it difficult for him to make his supervision fee and electronic monitoring expense payments. He

asserts that he substantially complied with all conditions, including that he obtain employment, to the best of his ability.

Concerning the completion of substance abuse treatment, Hunter missed his appointment on February 14, 2002. There was no indication that he attempted to reschedule the appointment, and his argument that there was "no timetable for completing the evaluation" is not persuasive. Likewise, his argument that he substantially complied with the requirement that he obtain employment is not persuasive in light of the statements by the probation officer that Hunter held jobs for only brief periods of time before quitting them. In short, we again find no abuse of discretion in the circuit court's decision to revoke Hunter's probation.

The order of the Hickman Circuit Court is affirmed.

ALL CONCUR.

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