

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002407-MR

MELDRUM GREG HARVEY

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NOS. 04-CR-00151 & 06-CR-00232

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: DIXON AND VANMETER, JUDGES; LAMBERT,¹ SENIOR JUDGE.

DIXON, JUDGE: Meldrum Greg Harvey appeals from a judgment of the Muhlenberg Circuit Court rendered following his conditional guilty plea to the offense of first-degree bail jumping. Finding no error, we affirm.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In April 2005, a jury found Harvey guilty of the rape and sodomy of a child under the age of twelve. At his sentencing hearing, the court imposed a sentence of forty years' imprisonment; however, the court granted Harvey's request for bail pending the direct appeal of his conviction to the Kentucky Supreme Court. Harvey's family posted a \$50,000 cash bond to secure Harvey's release from custody pending appeal. The court's order granting bail set forth the following conditions of release:

[T]he defendant shall have no contact whatsoever with the [victim's] family and the defendant shall have no unsupervised contact with any unrelated female less than twelve (12) years of age and the defendant shall report to jail when ordered.

In November 2006, the Supreme Court rendered an opinion affirming Harvey's conviction on direct appeal. On November 29, 2006, the trial court *sua sponte* issued an order revoking Harvey's bail and ordering him to report to jail on December 6, 2006. On December 4, Harvey filed a motion to reconsider, alleging the court was without authority to revoke the appeal bond because the Supreme Court opinion was not final.² The trial court denied Harvey's motion, and Harvey failed to report to jail as ordered.

On December 15, 2006, Harvey was indicted for first-degree bail jumping, and he was not apprehended until seven months later.³ After Harvey was

² Indeed, Harvey emphasizes the initial opinion was withdrawn, and the final opinion affirming his conviction was not rendered until June 2007.

³ During Harvey's absence from custody, the Commonwealth moved for the forfeiture of Harvey's bond. Following a hearing, the court ordered forfeiture of the \$50,000 bond, and the sureties appealed. A panel of this Court affirmed the forfeiture order in an unpublished decision,

taken into custody, he moved to dismiss the bail jumping indictment. Harvey alleged he was denied due process by the court's *sua sponte* decision to revoke bail and that the court's order was *void ab initio*. The court denied Harvey's motion; thereafter, he entered a conditional guilty plea, which reserved the right to appeal the issue of bond revocation.

Harvey raises several theories on appeal to support his contention that revocation of bail on appeal was erroneous as a matter of law and warranted dismissal of the bail jumping indictment. The majority of Harvey's arguments are premised on the trial court's alleged failure to follow the Kentucky Rules of Criminal Procedure regarding bail.

RCr 12.78 states:

Bail on appeal

(1) Bail may be allowed by the trial judge pending appeal notwithstanding that service of the sentence has commenced, except when the defendant has been sentenced to death or life imprisonment.

(2) When a person has been convicted of an offense and only a fine has been imposed the amount of bail shall not exceed the amount of the fine and costs.

(3) The applicable provisions governing bail shall apply to bail on appeal.

(4) The court allowing bail may at any time revoke the order admitting the defendant to bail.

Harvey v. Commonwealth, 2007-CA-000461-MR (Jan. 25, 2008).

In *Johnson v. Commonwealth*, 551 S.W.2d 577, 578 (Ky. App. 1977), the Court noted, “RCr 12.78 allows the circuit judge wide discretion in granting bail and in revoking bail after a defendant has been convicted.” Although Harvey reluctantly acknowledges the authority vested in the trial court by RCr 12.78(4), he insists that RCr 12.78(3) requires the court to hold a due process hearing before revoking bail on appeal. Harvey cites RCr 4.42, titled “Change of conditions of release,” which requires a court to hold an adversary hearing before issuing findings regarding a change in release conditions. According to Harvey, the court’s *sua sponte* revocation of bail on appeal constituted a change in his conditions of release that required a due process hearing.

First, we disagree with Harvey’s characterization of the revocation order as a change in his release conditions. One of Harvey’s conditions of release was the requirement that he report to jail when ordered; accordingly, the court’s revocation order directing Harvey to report to jail was consistent with release conditions, not a change in release conditions.

Second, by its plain language, RCr 4.42(1) states the hearing requirement applies to a defendant released on bail prior to trial. As RCr 4.42 is clearly limited to pre-trial bail, we are not persuaded the rule is applicable to bail on appeal by operation of RCr 12.78(3). This interpretation is logical, as there is no constitutional right to bail following conviction and pending appeal. *Braden v. Lady*, 276 S.W.2d 664, 666 (Ky. 1955). “The presumption of innocence which is the basis of all legitimate guarantees of bail no longer applies to a convicted

defendant.” *Commonwealth v. Peacock*, 701 S.W.2d 397, 398 (Ky. 1985). Quite simply, Harvey was convicted of a serious crime, he was granted bail at the court’s discretion, and he agreed to report to jail when so ordered. The trial court clearly had the authority to revoke Harvey’s bail at any time, without holding a hearing and regardless of the status of his direct appeal. *See* RCr 12.78(4).

In sum, the trial court did not abuse its discretion by revoking Harvey’s bail on appeal and ordering him to report to jail. Furthermore, because the revocation order was binding on Harvey, the court properly denied the subsequent motion to dismiss the bail jumping indictment.⁴

For the reasons stated herein, the judgment of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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⁴ Although we have fully considered the remaining arguments raised by Harvey, we conclude they are without merit and need not be addressed herein.