

RENDERED: NOVEMBER 19, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

MODIFIED: DECEMBER 3, 2010; 10:00 A.M.

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001749-MR

JUDY CARMEN RITCHIE

APPELLANT

v. APPEAL FROM ROCKCASTLE CIRCUIT COURT
HONORABLE DAVID A. TAPP, JUDGE
ACTION NO. 06-CR-00037

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; WINE, JUDGE; HENRY,¹ SENIOR JUDGE.

HENRY, SENIOR JUDGE: Judy Carmen Ritchie appeals from an order of the Rockcastle Circuit Court revoking her probation upon a 25-year sentence for drug

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

trafficking offenses. She argues the trial court failed to make written findings of fact stating its reasons for revoking probation. After our review, we affirm.

Ritchie entered a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) to one count of first-degree complicity to trafficking in a controlled substance while in possession of a firearm and one count of third-degree trafficking in a controlled substance while in possession of a firearm. By order entered October 26, 2006, she was to serve a total consecutive sentence of 25 years but that sentence was probated for a period of five years. Among the conditions of probation were the requirements to refrain from the possession or use of alcohol or drugs unless prescribed by a doctor; to comply with any rules of the probation office; to refrain from any further violation of the law; and to report to a probation officer as directed.

After sentencing, Ritchie requested the permission of her probation officer to be allowed to move to Ohio. According to the probation officer's testimony, he approved Ritchie's move to Ohio, gave her a transfer packet, informed her it was necessary to contact the Ohio probation officials concerning taking over supervision of her probation and admonished her to remain out of the state of Kentucky except for scheduled court appearances.

Ritchie was arrested in Garrard County on December 10, 2006, and in case number 06-T-01334 was charged with driving under the influence, reckless

driving, failure to produce a valid insurance card, improper registration plates, no or expired registration plates, no or expired Kentucky registration receipt, failure to register the transfer of a motor vehicle and failure to signal. On December 19, 2006, she was charged in Boone County case number 07-T-00568 with a violation of Kentucky Revised Statutes (KRS) 189.290 when she was stopped for her failure to drive carefully.

On January 20, 2007, the Commonwealth filed a motion to revoke her probation. The motion stated in relevant part that “the defendant’s probation should be revoked based on the defendant’s plea of guilty in Boone District Court (07-T-00568); new charges in Garrard District Court (06-T-1334); and the defendant’s violation of probation conditions for failure to remain out of the state of Kentucky.”

A probation revocation hearing was convened on February 1, 2007. Defense counsel requested a competency evaluation hearing at the outset, arguing that Ritchie was highly confused, family members were concerned about her mental health, and that she had received a head injury after final sentencing. After initially denying the motion, the trial court subsequently abated the proceedings pending a competency evaluation after hearing Ritchie’s disoriented testimony. The revocation hearing was reconvened on May 10, 2007, at which time the trial court found Ritchie was competent. At the conclusion of the hearing, the trial court determined that Ritchie’s probation should be revoked. In support of that decision, the trial judge made oral findings from the bench. Reasons stated for

revocation were failure either to report to her Kentucky probation officer or make contact with Ohio probation officials for a period of 30 days; returning to Kentucky in contravention of her Kentucky probation officer's admonition that she do so only for scheduled court appearances; the Garrard and Boone County violations; and being in possession of prescription drugs in an improper container for which she did not have a prescription. Although she was not charged with this new crime, evidence was introduced at the revocation hearing.

The trial court entered an order revoking her probation on June 14, 2007. The order did not however, set forth findings explaining the court's rationale for the revocation. Instead, the order simply stated "[h]aving heard arguments of counsel, the Court hereby orders that probable cause for revocation is found."

Ritchie filed this appeal contending that the trial court erred because its order revoking probation failed to make written findings setting forth the evidence relied upon and the reasons revoking probation in violation of her due process rights as required by the holding of *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). Prior to rendering our decision, we requested supplemental briefs from both sides addressing the newly rendered opinion of the Kentucky Supreme Court in *Commonwealth v. Alleman*, 306 S.W.3d 484 (Ky. 2010). Based on that opinion, we now affirm the determination of the Rockcastle Circuit Court.

In *Alleman*, the trial court announced sufficient reasons for revoking probation yet failed to issue an order detailing in writing the evidence relied on and the reasons for revoking probation. The Supreme Court opinion concluded “that a recorded oral recitation by the trial court of findings and reasons for revocation, if otherwise sufficient, satisfies applicable due process requirements.” *Id.* at 486.

Ritchie would have us overrule the Kentucky Supreme Court holding in *Alleman*. Even if we were so inclined, we are without power to do so. “The Court of Appeals is compelled to follow the precedent established by the decisions of the Supreme Court.” *Special Fund v. Francis*, 708 S.W.2d 641, 642 (Ky. 1986); *see also* Kentucky Supreme Court Rules (SCR) 1.030(8)(a). We find, as required by the holding of *Alleman*, that the videotape record of the trial court’s reasons for revocation and a summary of the evidence relied on by that court to reach its decision is sufficient. A written order detailing those findings is not required.

The order of the Rockcastle Circuit Court is affirmed.

ALL CONCUR.

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