

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-002307-MR

SUSAN BROCK

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 09-CR-00703

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE; CAPERTON AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Susan Brock brings this appeal from a December 17, 2010, order of the Kenton Circuit Court revoking and reinstating her probation. We affirm.

In November 2009, Brock was subject to various criminal charges pending in Boone County, Kentucky, when she was arrested in Kenton County,

Kentucky. At the time of her arrest, Brock was in possession of a contraband substance and was subsequently indicted upon the offense of possession of a controlled substance in Kenton County. As a result, Brock had simultaneous criminal actions in two different courts – Boone Circuit Court and Kenton Circuit Court.¹

The action in Boone Circuit Court (Action No. 09-CR-00261) was disposed of before the action in Kenton Circuit Court (Action No. 09-CR-00703). In Action No. 09-CR-00261, the Boone Circuit Court ultimately sentenced Brock to five-years' imprisonment. The sentence was probated for a period of five years with ninety days to serve. The ninety-day jail sentence could be served in a residential drug treatment program. Shortly thereafter, the Kenton Circuit Court sentenced Brock to three-years' imprisonment probated for a period of five years. One of the conditions of Brock's probation in the Kenton Circuit Court action (Action No. 09-CR-00703) was that she attend a residential drug treatment program.

Brock subsequently entered the Brighton Recovery Center for Women. Several months into her treatment Brock suffered a stroke while at Brighton. Brighton could not pay for Brock's medical treatment, so Brock sought permission to leave Brighton in order to receive treatment for her medical issues. Brock's attorney filed a motion in Boone Circuit Court seeking the court's consent

¹ This appeal was taken from the Kenton Circuit Court action (Action No. 09-CR-00703). We have not been provided a copy of the Boone Circuit Court record or otherwise informed of the specific charges against Susan Brock in Boone County.

to discontinue inpatient treatment at Brighton in order for Brock to receive medical treatment. The motion was ultimately granted by the Boone Circuit Court by order entered November 5, 2010.

On November 4, 2010, Brock was released from Brighton per the Boone Circuit Court order. Brock claims she immediately attempted to report to her probation officer in Kenton County, but the office had already closed for the day. Brock then proceeded to her daughter's house in Clermont County, Ohio, where she spent the night. When Brock reported to her probation officer the next morning, she was arrested for violating the conditions of her probation in Kenton Circuit Court.

Following a revocation hearing, the Kenton Circuit Court found that Brock had violated her probation by leaving the treatment facility and by leaving the state overnight to stay with her daughter. By order entered December 17, 2010, the Kenton Circuit Court "revoked but reinstated" Brock's probation. As a condition of the reinstated probation, Brock was again required to attend a residential drug treatment program. This appeal follows.

Brock contends that the Kenton Circuit Court erred by revoking her probation. Brock specifically alleges that the circuit court abused its discretion by revoking her probation for not completing the residential drug treatment program and for leaving the state overnight.

Our standard of review upon a trial court's decision to revoke probation is reviewed for abuse of discretion. *Miller v. Com.*, 329 S.W.3d 358

(Ky. App. 2010). An abuse of discretion occurs when the trial court's decision is "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Com. v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

In the case *sub judice*, Brock had two separate sentences of imprisonment imposed by two different circuit courts. Although Brock sought and received permission from the Boone Circuit Court to leave Brighton for medical reasons, the record is clear that she failed to obtain permission from the Kenton Circuit Court. By leaving the treatment facility before completing her treatment, Brock undeniably violated the terms of her probation in Kenton Circuit Court. Although we are sympathetic to Brock's situation, she was, nevertheless, ordered by the Kenton Circuit Court to complete a drug treatment program. She neither completed the treatment program nor sought permission of the Kenton Circuit Court to leave the program. Additionally, the Conditions of Supervision agreed to by Brock clearly provided that the designated area of supervision during her probationary period was Boone, Kenton, and Campbell counties in Kentucky, and Hamilton County in Ohio. It also provided that Brock could not leave the area of supervision without the permission of her probation officer. Thus, Brock also violated a condition of her supervision when she went to Clermont County, Ohio.

In sum, the revocation of Brock's probation was a discretionary decision within the province of the Kenton Circuit Court. Although we may have decided differently, we are unable to conclude that the Kenton Circuit Court abused its discretion by revoking Brock's probation.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas M. Ransdell
Assistant Public Advocate
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

W. Bryan Jones
Assistant Attorney General
Frankfort, Kentucky