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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000213-MR

SANTANA WOODARD

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE CHARLES C. SIMMS III, JUDGE
ACTION NO. 09-CR-00077

COMMONWEALTH OF KENTUCKY

APPELLEE

AND

NO. 2010-CA-000230-MR

SANTANA WOODARD

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE CHARLES C. SIMMS III, JUDGE
ACTION NO. 09-CR-00071

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CLAYTON AND NICKELL, JUDGES; ISAAC,¹ SENIOR JUDGE.

CLAYTON, JUDGE: This is an appeal from Appellant, Santana Woodard's, revocation of probation. For the reasons that follow, we reverse the decision of the trial court.

BACKGROUND INFORMATION

Woodard was sentenced to five (5) years in prison on July 21, 2009, in Hart Circuit Court for complicity to second-degree criminal mischief, complicity to theft by unlawful taking over 300 dollars and complicity to third-degree burglary. He was also sentenced to five (5) years of imprisonment for complicity to possession of a forged instrument in another court (also in Hart County) on that same day. The sentences were to run concurrently with one another as well as with another sentence Woodard was set to receive in Barren Circuit Court.

Woodard's Hart County sentences were probated for five (5) years under the following conditions of probation:

1. Avoid injurious or vicious habits, including, but not limited to, abuse of alcohol, drugs and other substances;
2. Good behavior and no substantial violations of the law;

¹ Senior Judge Sheila R. Isaac 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.

3. Support dependents and meet other family obligations;
4. Report to probation officer as directed;
5. Comply with all requirements and requests of probation officer, including random alcohol/drug testing;
6. Enroll in and complete counseling program designed to address substance abuse problem, as arranged for by probation officer;
7. Comply with all financial obligations imposed through Final Judgment of Conviction;
8. Pay restitution . . . for the benefit of Discount Tobacco. . . and IGA . . . ;
9. Pay restitution . . . for the benefit of the Log Cabin Store upon motion by Commonwealth;
10. . . . complete the 4 to 6 month in patient drug rehabilitation program through the Salvation Army, upon completion of [which] . . . enter and complete the Barren County Drug Court program.

Woodard completed the inpatient drug rehabilitation program and asked Thomas LaFollette, a probation and parole officer, to transfer from Barren County Drug Court to Warren County Drug Court. LaFollette denied Woodard's request and Woodard became angry and upset. On December 4, 2009, LaFollette filed a motion to have Woodard's probation revoked with the Hart Circuit Court. As part of LaFollette's motion, he stated that Woodard had become angry over the telephone on November 18, 2009, after hearing that he was denied his request for a change in his Drug Court program location.

LaFollette also attached an affidavit of Candy Reed-Barton which set forth that she had informed Woodard over the phone that the court had ordered him to complete the Barren/Metcalf Drug Court program and that she could not transfer any part of his requirements, including drug testing to Warren County. Reed-Barton also stated that Woodard became very hostile over the phone and started using profanity toward her. She also stated that Woodard and family members came to her Drug Court office and continued profanity when speaking about LaFollette.

Prior to the motion for revocation, Woodard's probation supervision had been transferred to Warren County as he lived and worked there. The trial court revoked Woodard's probation on January 19, 2010, finding that he had failed to complete the Drug Court program as ordered. On February 2, 2010, the trial court entered a second order stating that Woodard's probation was also revoked because he had violated the "good behavior" condition of his probation.

This appeal followed.

STANDARD OF REVIEW

In reviewing probation hearings, we review the trial court's findings for abuse of discretion. *Tiryung v. Com.*, 717 S.W.2d 503, 504 (Ky. App. 1986). Abuse of discretion occurs when "the trial judge's decision was arbitrary,

unreasonable, unfair, or unsupported by sound legal principles.” *Com. v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

DISCUSSION

Woodard presents three arguments. He argues that the trial court abused its discretion when it revoked his probation for failing to complete the Drug Court program requirements. Second, that the court’s revocation pursuant to the “good behavior” condition of probation was arbitrary, unreasonable, unfair and unsupported by sound legal principles. His third argument is that his due process rights were violated when the trial court did not allow him to present a witness or give him written notice of his alleged violations. In *Morrissey v. Brewer*, 408 U.S. 471-72, 92 S.Ct. 2593, 2596, 33 L.Ed.2d 484 (1972), the U.S. Supreme Court held that, in parole revocation matters, due process requires the following:

- a) written notice of the claimed violations of parole;
- b) disclosure to the parolee of evidence against him;
- c) opportunity to be heard in person and to present witnesses and documentary evidence;
- d) the right to confront and cross-examine adverse witnesses . . . ;
- e) a ‘neutral and detached’ hearing body . . . ; and,
- f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

In *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 93 S.Ct. 1756, 1760, 36 L.Ed.2d 656 (1973), the Court held that these requirements applied in revoking a

defendant's probation as well. *See also A.C. v. Com.*, 314 S.W.3d 319 (Ky. App. 2010). Woodard first contends that the trial court abused its discretion when it revoked his probation because he was completing the Drug Court program requirements. He asserts that he was being tested regularly, had never tested positive for drugs, had never received any sanctions from the Drug Court program, was completing homework, step-work, NA and AA work, going to life skills counseling and attending regular NA and AA meetings as well as maintaining stable employment. Thus, the trial court abused its discretion in finding that Woodard was not completing the Drug Court program as ordered.

The Commonwealth argues that the trial court's second order, which found in written findings that Woodard had violated his probation due to his failure to have "good behavior", was not an abuse of discretion. Woodard correctly argues that the trial court had lost jurisdiction over his action at the time of the entry of its second order and could not alter, amend or vacate its original order revoking probation. In *Com. v. Gross*, 936 S.W.2d 85, 87 (Ky. 1996), the court, citing *Silverburg v Com.*, 587 S.W.2d 241, 244 (Ky. 1979), held that "[w]here the Criminal Rules do not provide a time, the Civil Rules shall apply. [Kentucky Rules of Criminal Procedure] (RCr) 1.10. [Kentucky Rules of Civil Procedure] (CR) 59.05 provides that a judgment may be altered, amended or vacated within ten days after the entry of the final judgment." In the present case, more than ten days had elapsed between the trial court's original entry of its order revoking and

its “amended” one. Thus, the amended order must be voided. Woodard’s remaining arguments are moot.

Having found the trial court abused its discretion in revoking Woodard’s probation, we reverse the decision of the trial court and remand for proceedings consistent with this opinion.

ALL CONCUR.

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