

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001776-MR

TIFFANY LANHAM

APPELLANT

v. APPEAL FROM CRITTENDEN CIRCUIT COURT
HONORABLE C. RENÉ WILLIAMS, JUDGE
ACTION NO. 08-CR-00026

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, KELLER AND MAZE, JUDGES.

KELLER, JUDGE: Tiffany Lanham (Lanham) appeals from an order of the
Crittenden Circuit Court revoking her probation. For the following reasons, we
affirm.

FACTS

On October 6, 2008, Lanham pled guilty to two counts of trafficking in a controlled substance within 1,000 yards of a school by complicity and one count of second-degree trafficking in a controlled substance by complicity.

Approximately one month later, the trial court entered an order granting Lanham shock probation. The order specified many conditions, including that Lanham “[n]ot commit another offense;” “[p]ermit the probation officer to visit the defendant at home or elsewhere;” and “[a]nswer all reasonable inquires by the probation officer and promptly notice the probation officer of any changes in address or employment[.]”

On August 17, 2011, Lanham’s probation officer, Chasidy Wolfe (Wolfe), signed an affidavit asking the trial court to revoke Lanham’s probation. Wolfe cited one violation in her revocation request: “Absconding supervision – The Subject failed to report for the months of June and July 2011.” The trial court subsequently held a probation revocation hearing. At the hearing, Wolfe testified that Lanham failed to report when instructed on June 21 and July 19. Wolfe further testified that she sent Lanham letters to reschedule their meetings for June 28 and July 29, respectively, but Lanham again failed to report. When Wolfe went to Lanham’s address on August 4, 2011, Lanham was not at her home.

Additionally, Wolfe testified that, since being placed on probation, Lanham had been charged with receiving stolen property in Lyon County. Wolfe stated that Lanham failed to report this new charge. We note that Lanham’s failure

to report her new charge was not mentioned in Wolfe's affidavit. We note that Lanham was present at the hearing but did not testify.

After the hearing, the trial court entered an order revoking Lanham's probation for absconding supervision and for failing to report a new charge. It is from this order that Lanham appeals.

STANDARD OF REVIEW

As set forth in *Lucas v. Commonwealth*, 258 S.W.3d 806, 807-08 (Ky. App. 2008):

The appellate standard of review of a decision to revoke a defendant's probation is whether or not the trial court abused its discretion. *Tiryung v. Commonwealth*, 717 S.W.2d 503, 504 (Ky. App. 1986). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Generally, a trial court's decision revoking probation is not an abuse of discretion if there is evidence to support at least one probation violation. *Messer v. Commonwealth*, 754 S.W.2d 872, 873 (Ky. App. 1988).

ANALYSIS

On appeal, Lanham first argues that she was denied due process at her revocation hearing because she did not receive adequate notice of all of the allegations leading to revocation. Specifically, she contends that she should have received written notice prior to the hearing regarding Wolfe's allegation that she failed to report a new charge.

In considering this argument, our concern is whether the revocation proceeding herein complied with the minimal due process requirements set forth by the United States Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973). See *Robinson v. Commonwealth*, 86 S.W.3d 54, 56 (Ky. App. 2002). A revocation proceeding “is not a part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.” *Morrissey*, 408 U.S. at 480, 92 S. Ct. at 2600. However, a defendant is still entitled to written notice of the claimed violations of his conditional discharge and disclosure of the evidence against him. 408 U.S. at 489, 92 S. Ct. at 2604; *Robinson*, 86 S.W.3d at 56. KRS 533.050(2) similarly provides that “[t]he court may not revoke or modify the conditions of a sentence of probation or conditional discharge except after a hearing with defendant represented by counsel and following a written notice of the grounds for revocation or modification.”

In support of her position, Lanham argues that *Rasdon v. Commonwealth*, 701 S.W.2d 716, 718 (Ky. App. 1986), is directly on point. While on conditional discharge, the defendant in *Rasdon* was charged with sodomy and robbery of a woman identified by witnesses as a “street-wise Louisville prostitute.” The Commonwealth subsequently notified the defendant that it would seek to revoke the discharge based upon his re-arrest and the existence of probable cause for those offenses. *Id.* at 717. After hearing evidence regarding these matters, the trial court revoked the defendant’s conditional discharge based solely upon its finding that the defendant had failed to “avoid persons or places of disreputable or harmful character.” *Id.* at 718. While this was one of the conditions of the defendant’s release, it was not one of the written grounds provided by the Commonwealth in its revocation notice to the defendant.

On appeal, this Court held that a new revocation hearing was merited under these circumstances because the trial court “erroneously revoked [the defendant’s] conditional discharge for a reason other than one contained in the notice of the hearing.” *Id.* at 717. This Court further held that, despite its general reference to violations of the defendant’s discharge terms, the written notice in question “applies only to a re[-]arrest and probable cause to believe that he had committed a new crime. If other specific violations existed, they should have been stated in some manner to notify him of the charges he would be required to defend.” *Id.*

The case before us is distinguishable from *Rasdon*, because the discharge revocation in *Rasdon* was based solely upon a ground that had not been included in

the notice of revocation - the defendant's failure to "avoid persons or places of disreputable or harmful character." *Id.* at 718. The trial court in that case did not even consider the defendant's re-arrest or the existence of probable cause that he had committed another crime as reasons for its decision. Thus, the offenses for which the defendant in *Rasdon* was given written notice played no role in the trial court's revocation decision, making a new hearing necessary.

In this case, the trial court revoked Lanham's probation on two grounds - absconding from probation supervision and failing to report new charges. Lanham has alleged no procedural irregularities with respect to the absconding from supervision violation. Because the trial court could have revoked Lanham's probation solely on that basis, we believe that her minimal due process rights were satisfied here. *See Lucas v. Commonwealth*, 258 S.W.3d 806, 807-08 (Ky. App. 2008) (noting that "a trial court's decision revoking probation is not an abuse of discretion if there is evidence to support at least one probation violation").

Next, Lanham argues that the trial court erred by failing to consider alternatives to revocation and incarceration. As set forth in KRS 439.3106:

Supervised individuals shall be subject to:

(1) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community; or

(2) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the

risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

Lanham contends that revocation was not appropriate because her failure to report to her probation officer did not constitute “a significant risk to . . . the community at large.” KRS 439.3106(1). Lanham further argues that the court was required to consider alternatives to revocation based on the “the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.” KRS 439.3106(2).

At the revocation hearing, the trial court made a finding that Lanham’s failure to report to her probation officer did constitute a significant risk to the community at large. Specifically, the trial court found that by failing to report to her probation officer, there was no accountability for Lanham’s conduct. The trial court then made a determination that revocation was the most appropriate sanction in this case. Based on these findings, we believe the court did not abuse its discretion and that its findings were consistent with KRS 439.3106.

CONCLUSION

For the foregoing reasons, we affirm the order of the Crittenden Circuit Court revoking Lanham’s probation.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steven Buck
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Gregory C. Fuchs
Assistant Attorney General
Frankfort, Kentucky