

RENDERED: SEPTEMBER 20, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001679-MR

STEPHANIE RENAY TACKETT

APPELLANT

v.

APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE JOHN DAVID CAUDILL, JUDGE
ACTION NO. 05-CR-00010

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, DIXON AND MAZE, JUDGES.

DIXON, JUDGE: Appellant, Stephanie Renay Tackett, appeals from an order revoking her probation. She argues that the trial court lacked jurisdiction to revoke her probation and imposed an unauthorized sentence. We affirm.

Tackett was indicted on two counts of trafficking in a controlled substance in 2005. On February 28, 2006, Tackett entered a guilty plea without a sentencing recommendation. The Floyd Circuit Court imposed a “split sentence”

of 10 years of imprisonment on each count to run concurrently with the final three years probated after Tackett served the first seven years of the sentence. Tackett completed the first seven years of imprisonment. On November 3, 2011, the trial court found that Tackett had violated her probation by using narcotics and ordered her to complete a drug treatment and rehabilitation program. On April 5, 2012, the trial court again found that Tackett had violated her probation and granted shock probation on the condition that she complete a drug treatment program. In September 2012, Tackett was discharged from treatment for using controlled substances and she stipulated to violating her probation. Following a hearing, the trial court revoked her probation and imposed the remainder of the original sentence. This appeal followed.

Tackett argues that the trial court lacked jurisdiction to revoke her probation because her probation was imposed at the time of sentencing and had expired prior to the revocation. She further argues that the “split sentence” exceeded statutory authority.

Kentucky Revised Statutes (KRS) 532.040 states in part that “[a] sentence to probation or conditional discharge shall be deemed a tentative one to the extent that it may be altered or revoked in accordance with KRS Chapter 533, but for purposes of appeal shall be deemed to be a final judgment of conviction.” KRS 533.040(1) states “[a] period of probation or conditional discharge commences on the day it is imposed.” However, KRS 533.030(1) states in part that “[c]onditions of probation shall be imposed as provided in KRS 533.030, but the court may

modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation.” KRS 533.030(6) provides in part:

When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed twelve (12) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter.

The trial court sentenced Tackett as follows:

[T]he Defendant is hereby sentenced to TEN (10) YEARS in the state penitentiary on Count 1, and TEN (10) YEARS in the state penitentiary on Count 2, with said sentences to run concurrently. However, after the service of SEVEN (7) YEARS, the balance of said sentence shall be suspended and the Defendant placed upon THREE (3) YEARS of supervised probation.

It appears that the trial court imposed a sentence that was not expressly permitted by the sentencing statutes by requiring Tackett to serve seven years of imprisonment prior to the imposition of probation. However, our Supreme Court held that a defendant is precluded from challenging the jurisdiction of a trial court to revoke probation where the defendant knowingly and voluntarily waived statutory requirements in exchange for leniency. *Commonwealth v. Griffin*, 942 S.W.2d 289, 292 (Ky. 1997). We find no distinction in the fact that the defendant in *Griffin* requested the waiver of the statutory requirements himself and Tackett

simply pled guilty without agreeing to a sentencing recommendation. There is no distinction because Tackett enjoyed the benefit of the trial court's leniency and did not appeal the sentence at the time it was imposed as permitted by KRS 532.040. Therefore, under *Griffin*, we conclude that Tackett is precluded from challenging the trial court's jurisdiction to revoke her probation.

Accordingly, the order of the Floyd Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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