

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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001708-MR

LINDA ANN HUBBARD

APPELLANT

v. APPEAL FROM CRITTENDEN CIRCUIT COURT
HONORABLE C. RENE' WILLIAMS, JUDGE
INDICTMENT NO. 10-CR-00058

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, DIXON, AND MAZE, JUDGES.

CLAYTON, JUDGE: Linda Ann Hubbard appeals from the September 13, 2012, order of the Crittenden Circuit Court that revoked Hubbard's probation and reinstated her five-year sentence. Because we hold that the trial court did not abuse its discretion, we affirm.

In 2010, Hubbard was found guilty of one count of second-degree trafficking in a controlled substance and was sentenced to five years' probation. In

2011, Hubbard's probation was revoked. Three months later, on September 8, 2011, Hubbard was granted shock probation. In addition to other requirements, Hubbard's shock probation included the following conditions: do not commit additional offenses; avoid injurious or vicious habits; and promptly notify the probation officer of any changes in address. In 2012, Hubbard's probation officer filed a supervision violation report and recommended that Hubbard's probation be revoked. That report stated that Hubbard had been charged with fourth-degree assault; that a Domestic Violence Order ("DVO") had been issued against her; that she had tested positive for marijuana and methamphetamine use in drug tests that were later determined to be diluted; and that she had changed her address and county of residence without notifying, or receiving approval from, her parole officer. Hubbard would later testify that the assault charge had been dropped. A revocation hearing was held and on September 13, 2012, Hubbard's probation was revoked and she was resentenced to five years of incarceration. This appeal followed.

"We review a circuit court's decision revoking a defendant's probation for an abuse of discretion." *Jarrell v. Commonwealth*, 384 S.W.3d 195, 198 (Ky. App. 2012). Probation revocation requires proof by a preponderance of the evidence that a probationer has violated the terms of his or her probation. *Miller v. Commonwealth*, 329 S.W.3d 358 (Ky. App. 2010). In addition, the trial court must consider the factors set in Kentucky Revised Statutes (KRS) 439.3106, which reads:

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.

Hubbard's sole argument on appeal is that the trial court abused its discretion when it revoked her probation because it did not make a finding that she posed a significant risk to the community at large, pursuant to KRS 439.3106. We disagree. This Court has previously held that "[t]he statutory language of KRS 439.3106 does not require the court to make specific findings of fact." *Southwood v. Commonwealth*, 372 S.W.3d 882, 884 (Ky. App. 2012). More precisely, we held that a trial court's determination, when based on the violent nature of the probationer's alleged criminal behavior, was consistent with KRS 439.3106. *Id.* That lack of specific fact-finding which was found acceptable in *Southwood* was later distinguished from a case in which the "new alleged criminal behavior was not violent." *Carter v. Commonwealth*, __S.W.3d__ (Ky. App. 2013). In the case presently before us, the trial court found that Hubbard had violated the terms of her probation by receiving new charges, failing to report her change of address, and submitting a diluted drug screen. Hubbard's new charges were an assault charge

and the entry of a DVO. A charge of fourth-degree assault requires a finding of physical injury to another person. KRS 508.030. In addition, an entry of a DVO requires a finding “from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur.” KRS 403.750. By their very definitions, the elements of these charges include violence and harm to others. Such behavior clearly constitutes a significant risk to the community, regardless of whether specific findings are made to that effect. *See Southwood*, 372 S.W.3d 882. Accordingly, the trial court’s failure to enter such findings does not constitute an abuse of discretion.

For the foregoing reasons, the September 13, 2012, order of the Crittenden Circuit Court is affirmed.

ALL CONCUR.

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