

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-002104-MR

DELLARD LEE GIBSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MARTIN F. MCDONALD, JUDGE
ACTION NO. 10-CR-000249

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CAPERTON, LAMBERT AND MOORE, JUDGES.

LAMBERT, JUDGE: Dellard Lee Gibson appeals from a Jefferson Circuit Court order revoking probation and executing sentence.

Gibson entered a plea of guilty to second-degree robbery and was sentenced to serve ten years. On June 6, 2011, he was granted shock probation for a period of five years. On September 13, 2012, the Commonwealth filed a motion to revoke his probation, attaching a special supervision report from his probation

officer. Proceedings on the matter were held on November 7, 2012. Although the trial court refused to hold a formal revocation hearing, the probation officer was sworn in as a witness in order to affirm the trial court's prior recitation of the case history, and an officer who was allegedly assaulted by Gibson was introduced to the court. The Commonwealth never called or questioned any witnesses, and defense counsel was not permitted to cross-examine or to call any witnesses. The trial court entered an order revoking probation. This appeal by Gibson followed.

Gibson argues that the proceedings failed to comply with the minimal requirements of due process, which include the "opportunity to be heard in person and to present witnesses and documentary evidence" and "the right to confront and cross-examine adverse witnesses[.]" *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S.Ct. 2593, 2603, 33 L.Ed.2d 484 (1972) (made applicable to probation revocation by *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 93 S.Ct. 1756, 1759-60, 36 L.Ed.2d 656 (1973)). The Commonwealth agrees. Accordingly, we reverse the order revoking Gibson's probation and remand for a new probation revocation hearing.

ALL CONCUR.

BRIEF FOR APPELLANT:

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