

RENDERED: OCTOBER 30, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000529-MR

PAMELA ROSS

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE ELISE GIVHAN SPAINHOUR, JUDGE
ACTION NO. 95-CR-00035

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND KRAMER, JUDGES.

CLAYTON, JUDGE: This is an appeal from the Bullitt Circuit Court revoking the Appellant, Pamela J. Ross's, probation. Based upon the following, we affirm the decision of the trial court.

BACKGROUND SUMMARY

Ross was arrested and charged with Driving Under the Influence (DUI) 4th, Operating on a Suspended License, Giving a False Name and Address, and Reckless Driving. Ross pled guilty to DUI 4th and Operating on a Suspended License on January 26, 1998, in Bullitt County Circuit Court. On January 28, 1998, the trial court entered a Final Judgment and Sentence of Probation, which set forth that “[e]ntry of judgment imposing imprisonment is hereby withheld....” It also set forth that Ross would be placed on probation for a period of five (5) years, subject to the following conditions:

1. Continued good behavior.
2. Refrain from violating the law in any respect.
3. Report in person at least once each month to the Probation Officer.
4. Comply with the regulations of the Division of Probation & Parole and the directions of the Parole Officer.
5. Defendant must submit to random alcohol and drug tests at her own expense when directed by the Probation & Parole Officer.
6. Defendant must enroll in and complete an alcohol and substance abuse program to be administered by the Office of Probation & Parole.
7. Pay Court costs of \$65.00 within 90 days from date.
8. Pay a supervision fee of \$10.00 per month.

On March 2, 1998, the trial court entered an Amended Final Judgment and Sentence of Probation. The format of this Judgment was identical to the one entered earlier except the additional paragraph as follows:

IT IS FURTHER ORDERED AND ADJUDGED BY THE COURT that the Defendant shall serve 120 days in the Bullitt County Jail with the remainder of her five year

sentence to be probated, subject to the following conditions:

The only additional condition was “[t]he Defendant shall receive credit for 61 days in custody and shall serve the remaining 59 days in the Bullitt County Jail.”

Finally, on March 17, 1998, the trial court issued an “Amended Final Sentence.” This judgment was stylistically different from the previous two and set forth, in its entirety, as follows:

Upon Motion of the Defendant, and the Court being otherwise sufficiently advised;

It is hereby the further Order of this Court that the Defendant, Pamela J. Ross Napier Trostle, whose sentence this Court handed down as Amended on the 2nd day of March, 1998, and that sentence requiring a minimum jail time of 120 days;

Orders and Adjudges as follows, that the Defendant shall be given jail credit for 61 days, and shall further be allowed to serve the remaining 59 days through Home Incarceration, that time beginning to run as of 2 March 1998.

On January 30, 1999, the Commonwealth made a motion to revoke Ross’s probation based on allegations that she had failed “...to participate in her assigned Alcohol/Drug Program; by testing positive for morphine and codeine on November 25, 1998; and by reporting under the influence of drugs on December 9, 1998....” Ross failed to appear at the time of the motion, so the trial court issued a bench warrant for her arrest on January 26, 1999. Thereafter, on February 3, 1999, the trial court withdrew the bench warrant, finding that Ross was under treatment as an inpatient at the Life Springs Substance Abuse Center.

On September 13, 2000, the Commonwealth moved the trial court once again for a probation revocation hearing. The Commonwealth set forth as the grounds for this motion the fact that Ross had “pled guilty to DUI-2nd in Harrison County, Indiana, on 8-16-00; by failing to report arrest to Probation and Parole Officer; by failing to return to Kentucky as directed by Probation and Parole in Indiana in December of 1998; by failing to complete drug and alcohol program as directed by Probation and Parole in Indiana in December of 1998; and by failing to report to any Probation and Parole Office from January 1999 to present....”

While the record does not include an order of the trial court issuing a bench warrant, the Warrant of Arrest generated February 18, 2014, set forth that a bench warrant had been issued on October 2, 2000, for failure to appear. Ross was arrested pursuant to the bench warrant when she was involved in a motor vehicle accident in Louisville, Kentucky, on February 18, 2014. On March 4, 2014, the trial court revoked Ross’s probation and sentenced her to five (5) years in prison. Ross then brought this appeal.

STANDARD OF REVIEW

In reviewing a trial court’s revocation of probation, we use an abuse of discretion standard. *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).

With this standard in mind, we review the merits of the appeal.

ANALYSIS

As stated by Ross, probation revocation decisions do not require as much proof as that in a criminal trial and Kentucky Rules of Evidence do not apply.

Gagnon v. Scarpelli, 411 U.S. 778, 786-87, 93 S.Ct. 1756, 1761-62, 36 L.Ed.2d 656 (1973). Ross argues that the burden is on the Commonwealth to prove that she knew she was on probation. The judgments of the trial court clearly set forth that Ross would remain on probation for five (5) years. While Ross argues that the Amended Final Sentence did not set forth that she was on probation, there is nothing in the record setting aside the prior Amended Final Judgment and Sentence of Probation. Ross’s prior motion to revoke was based on positive drug and alcohol tests at her probation officer’s request as well as showing up for her probation appointment while under the influence. Thus, we disagree with Ross that she was not on notice of her probationary status.

Ross also asserts that an “Amended Final Sentence” by its title supplants all prior sentences and becomes an entire new sentence, but we disagree. Without the withdrawal of the prior Amended Final Judgment and Sentence of Probation, it remained in effect. As to Ross’s argument that the burden was shifted to her, there was sufficient proof regarding the entry of the judgment and sentence, as recited

previously. There was also evidence of the motion to revoke and the bench warrant issued. Thus, we affirm the decision of the trial court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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