

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-002041-MR;
NO. 2014-CA-002042-MR;
NO. 2014-CA-002043-MR;
NO. 2014-CA-002044-MR;
NO. 2014-CA-002045-MR

JANICE COLLINS

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE HENRY S. JOHNSON, JUDGE
ACTION NOS. 13-CR-00185; 13-CR-00186; 13-CR-00187;
13-CR-00188; AND 13-CR-00262

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: COMBS, KRAMER, AND STUMBO, JUDGES.

KRAMER, JUDGE: Janice Collins appeals the Harlan Circuit Court's orders revoking her probation in five different cases. After a careful review of the records, we reverse because the circuit court abused its discretion in revoking

Collins's probation without consideration of KRS¹ 439.3106, and we remand for further proceedings.

Collins was indicted in five cases in the circuit court. Resulting from those indictments, she entered guilty pleas to: Four counts of second-degree trafficking in a controlled substance; three counts of trafficking in marijuana, less than eight ounces; one count of trafficking within one thousand feet of a school; one count of first-degree possession of a controlled substance, first offense; one count of possession of marijuana; one count of possession of drug paraphernalia, first offense; and one count of public intoxication. Collins was sentenced to a total of five years of imprisonment, which was probated for five years with the first year supervised.

In October 2014, a couple of months after the circuit court's judgments were entered against Collins, the Commonwealth moved to revoke her probation in each of those cases. The Commonwealth argued that drug tests Collins had taken in October 2014 tested positive for percocets, marijuana, cocaine, and oxycodone. Additionally, the Commonwealth alleged that Collins had failed to: Enroll in GED classes; attend AA/NA meetings; seek employment as directed by the court; make payments toward restitution or her supervision fee; and cooperate with her probation officer by refusing to produce a urine sample three times that she was requested to do so.

¹ Kentucky Revised Statute.

A probation revocation hearing was held. The circuit court entered orders in each of the five cases granting the Commonwealth's motion to revoke Collins's probation, but it did so without much explanation, other than stating that Collins had "not complied with the terms and conditions of her probation." Collins was remanded to the custody of the Department of Corrections and ordered to begin serving her sentence.

Collins now appeals, contending that the circuit court erred when it did not consider alternative sanctions pursuant to KRS 439.3106 when it revoked her probation. The Commonwealth agrees that because Collins's probation was revoked without complying with KRS 439.3106, the case "should be reversed and remanded for the trial court to expressly consider whether [Collins's] failure to adhere to the terms of probation constituted 'a significant risk to [her] prior victims or the community at large,' and whether she can 'be appropriately managed in the community.'" KRS 439.3106(1)."

"A decision to revoke probation is reviewed for an abuse of discretion. . . . Under our abuse of discretion standard of review, we will disturb a ruling only upon finding that the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. Andrews*, 448 S.W.3d 773, 780 (Ky. 2014) (internal quotation marks and citation omitted).

In *Andrews*, the Kentucky Supreme Court held that "KRS 439.3106(1) requires trial courts to consider whether a probationer's failure to abide by a condition of supervision constitutes a significant risk to prior victims or

the community at large, and whether the probationer cannot be managed in the community before probation may be revoked.” *Andrews*, 448 S.W.3d at 780. In the present case, it appears the circuit court did not take the factors specified in KRS 439.3106 under consideration. Consequently, the circuit court abused its discretion.

Accordingly, the orders of the Harlan Circuit Court are reversed, and the cases are remanded for further consideration under KRS 439.3106.

ALL CONCUR.

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