

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2017-CA-000361-MR

WILLIAM ALEXANDER

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE MARTIN J. SHEEHAN, JUDGE  
ACTION NO. 12-CR-00190-002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
REVERSING

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BEFORE: DIXON, JOHNSON, AND TAYLOR, JUDGES.

JOHNSON, JUDGE: William Alexander (“Alexander”), appeals the circuit court’s revocation of his probation. Alexander argues that the time during which the court could revoke his probation had expired, and therefore, the court lacked jurisdiction to act. After reviewing the record in conjunction with the applicable

legal authorities we REVERSE the Kenton Circuit Court's order of February 22, 2017.

### **BACKGROUND**

After having pleaded guilty to Criminal Mischief in the First Degree and Theft by Unlawful Taking Over \$500, the court, on May 30, 2012, sentenced Alexander to three years' imprisonment, probated for three years. In addition, Alexander was required to pay restitution in an amount to be set. On October 15, 2012, Alexander's probation officer filed an affidavit stating that Alexander had failed to report a change in his home address, left the state without permission, was avoiding probation supervision, failed to obtain employment, failed to make restitution as directed, and used a controlled substance--all violations of the conditions of his probation. The probation officer requested a hearing on the violations and recommended that a warrant be issued for his arrest. On October 17, 2012, the court issued a warrant for his arrest.

More than four years later, on January 28, 2017, Alexander was arrested in Hamilton County, Ohio, on a charge of possession of illegal drug paraphernalia. After pleading guilty to the Ohio charges, the arrest warrant out of Kenton County was executed and Alexander was transferred to Kentucky. On February 7, 2017, Alexander was brought before the court at which time he was appointed counsel and a probation revocation hearing was scheduled. The revocation hearing was held on February 20, 2017, and an order issued February

22, 2017, in which the court revoked Alexander's probation and sentenced him to serve the original three years' imprisonment. Alexander now appeals his probation revocation on the basis that the probationary period had expired on February 7, 2017, and that the court was without jurisdiction to revoke his probation.

### **STANDARD OF REVIEW**

Because this matter turns on the interpretation of a statute, our review is *de novo*. *Commonwealth v. Tapp*, 497 S.W.3d 239, 241 (Ky. 2016) (citing *Hearn v. Commonwealth*, 80 S.W.3d 432, 434 (Ky. 2002)).

### **ANALYSIS**

The only issue presented by Alexander for review is whether the court had jurisdiction to revoke his probation. Alexander argues that the time for the court to act concerning his probation was at his February 7, 2017, court appearance. Since the court failed to extend his probation at his February 7 court appearance, Alexander argues that pursuant Kentucky Revised Statutes ("KRS") 533.020(4) the court was without jurisdiction to act.

The facts are that Alexander was placed on probation May 30, 2012, for a period of three years. He violated the terms of that probation and an arrest warrant was issued for him on October 17, 2012. However, the warrant was not served until some four years later, on February 1, 2017, when Alexander was arrested in Ohio. He was returned to Kentucky and appeared before the court on

February 7, 2017, at which time the court set bail and appointed counsel to represent him and set his probation revocation hearing for February 20, 2017.

On February 20, 2017, Alexander filed a Motion to Dismiss based upon the fact that his probationary period had expired as of February 7, 2017.

Alexander argues that the court lost jurisdiction since it did not extend his probationary period at the February 7 hearing. Alexander's argument rests upon his interpretation of KRS 533.020(2) and (4) which state in pertinent part:

(2) 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 alternative sentence.

...

(4) Upon completion of the probationary period, probation with an alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.

The court denied Alexander's motion to dismiss, stating that since Alexander was "on the lam" for nearly five years, with an arrest warrant pending, his probation time had been tolled. The court found that because the time was tolled, he still had 2 ½ years remaining on his probation period and ruled that it therefore had jurisdiction over his probation.

While we are sympathetic with the court's position, the case of *Commonwealth v. Tapp*, 497 S.W.3d 239 (Ky. 2016), is controlling. Tapp was

placed on a one-year probation. He violated the terms of his probation and a bench warrant was issued for his arrest. Tapp was then picked up by the police and made his appearance in court, seven days after the initial probation period would have expired. The court did not extend Tapp's probation period at that initial hearing, but set a date for his probation revocation hearing. In *Tapp*, the court found that the probation period is tolled when a warrant remains pending until the disposition of the warrant. However, the court then ruled that pursuant to Rules of Criminal Procedure ("CR") 2.06(1), once Tapp made his appearance at the initial hearing his warrant was no longer pending. Even though the court set a time for a revocation hearing, at the point that Tapp made his first appearance before the court, the trial court was required to either extend his probation period pursuant to KRS 533.020(4), or lose jurisdiction over his probation.

The same fact situation has occurred here. Alexander left the state, clearly violating his probation. A bench warrant was issued for his arrest and he was returned to Kentucky well after the three years of probation initially imposed. Kentucky law is clear that while the warrant remained pending, the time of his probation was tolled. However, once Alexander appeared at the February 7 hearing the warrant was no longer pending and at that point the court had to either extend his probation time under KRS 533.020(4) or lose jurisdiction over the probation issue.

Since the court did not extend his probation period at the February 7 hearing, the court lost jurisdiction over the matter and committed error when it attempted to revoke his probation.

### **CONCLUSION**

Based upon the foregoing, we REVERSE the February 22, 2017 Order Revoking Probation entered by the Kenton Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Roy Alyette Durham II  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear  
Kentucky Attorney General

Wm. Robert Long, Jr.  
Assistant Attorney General  
Frankfort, Kentucky