

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000910-MR

ARTHUR COUCH, JR.

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE KENT HENDRICKSON, JUDGE
ACTION NO. 16-CR-00216

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, D. LAMBERT, AND SMALLWOOD, JUDGES.

LAMBERT, D., JUDGE: Arthur Couch, Jr. appeals a Harlan Circuit Court order revoking his probation and imposing a five-year prison sentence. After review, we affirm.

I. INTRODUCTION

In November 2016, Couch pleaded guilty to an act of animal cruelty. In exchange, he accepted a five-year prison sentence, probated for five years. The circuit court sentenced him accordingly.

In March 2017, Probation Officer Lucas Wynn filed a supervision report alleging that Couch had used controlled substances. Officer Wynn consequently arranged for Couch to attend an inpatient drug treatment program at Hickory Hills Recovery Center. Couch left the facility less than two weeks after entering. Officer Wynn detailed Couch's disappearance in a second supervisory report dated April 20, 2017, after attempting to locate Couch at his home. Couch did not contact Officer Wynn to inform him of his whereabouts and was arrested nine days later.

The Commonwealth sought to revoke Couch's probation based on Officer Wynn's reports. At the revocation hearing, both Officer Wynn and Couch testified. Officer Wynn testified that Couch had taken a drug screen during a home visit and tested positive for methamphetamine and suboxone. Officer Wynn also testified that Couch had admitted to using the controlled substances. As to Couch's flight from Hickory Hills Recovery Center, Officer Wynn confirmed that Couch left after a 10-day stay without informing the probation office. Officer Wynn further testified that he visited Couch's home two days later but was unable to locate him. According to the Officer, Couch never contacted the probation office after leaving Hickory Hills.

In his defense, Couch explained that he left the treatment facility because his wife had a medical emergency and the Hickory Hills staff told him he

could tend to her. He also testified that he was not attempting to flee his treatment program. Nevertheless, he acknowledged that he did not contact the probation office after leaving the facility.

At the hearing's conclusion, the circuit court revoked Couch's probation and ordered him to serve his prison sentence. The circuit court concluded that Couch had violated the terms of his probation by using controlled substances, absconding from supervision, and failing to complete substance abuse treatment. The circuit court also found from Couch's behavior that he posed a significant risk to the community that could no longer be appropriately managed. This appeal followed.

II. STANDARD OF REVIEW

An appellate court will not disturb a trial court's decision with respect to probation revocation absent an abuse of discretion. *Commonwealth v. Andrews*, 448 S.W.3d 773, 780 (Ky. 2014). Controlling statutory criteria must be followed. *Id.* And, any factual findings relied upon must be supported by substantial evidence from the record. *See Davis v. Commonwealth*, 484 S.W.3d 288, 290 (Ky. 2016) (explaining review under clearly erroneous standard).

III. DISCUSSION

On appeal, Couch argues his probation was improperly revoked because the circuit court failed in its analysis under Kentucky Revised Statutes

(KRS) 439.3106. Couch claims the circuit court failed to adequately find that he posed a significant risk to the community and that he could not be appropriately managed. For the following reasons, we disagree.

Incarceration is a potential consequence for probationers who violate the conditions of their supervision. *See* KRS 439.3106(1). Before this form of probation revocation can occur, however, the trial court must find that the probationer's actions constituted a significant risk to prior victims or the community and that the probationer could not be appropriately managed in the community. *Andrews*, 448 S.W.3d at 780-81. These findings may be oral or in writing; the only requirement is that they are supported by the record. *See McClure v. Commonwealth*, 457 S.W.3d 728, 733 (Ky. App. 2015) (unnecessary for trial court to explain in detail how probationer's violation endangered society).

Here, Officer Wynn's testimony as to Couch's admitted drug use, failure to complete drug treatment, and unreported absence from Hickory Hills was sufficient evidence for the circuit court to find that Couch failed to comply with the conditions of his supervision. Based on those actions, the circuit court also found Couch posed a significant risk to the community and could not be appropriately managed. *See* T.R. at 86, Order Revoking Probation. Abusing narcotics while on probation, combined with the unilateral decision to leave an ongoing program aimed at treating that abuse, is enough evidence for the circuit court to reasonably

order incarceration. We will not disturb this exercise of discretion. The judgment of the Harlan Circuit Court is affirmed.

ALL CONCUR.

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