

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001049-MR

JORDAN WATSON

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JUDY D. VANCE, JUDGE
ACTION NOS. 15-CR-00026, 16-CR-00010,
AND 16-CR-00056

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; JOHNSON¹ AND NICKELL, JUDGES.

JOHNSON, JUDGE: Jordan Watson appeals a judgment of the Casey Circuit Court terminating his probation and sentencing him to five years in the state

¹ Judge Robert G. Johnson authored this opinion prior to the expiration of his term of office. Release of the opinion was delayed by administrative handling.

penitentiary. After reviewing the record in conjunction with applicable legal authority, we affirm the judgment of the Casey Circuit Court.

BACKGROUND

On May 18, 2015, Watson pleaded guilty to possession of controlled substance in first degree, first offense (methamphetamine)² and possession of drug paraphernalia.³ On that date, Watson accepted a plea agreement based on the Commonwealth's recommendation of three years' imprisonment with pre-trial diversion for five years and a fine of \$50. The circuit court accepted the Commonwealth's recommendation. On February 3, 2016, Watson's probation officer, Keith Price, filed a violation report and recommended revocation of his pre-trial diversion status. Price alleged that Watson failed to report a change in his home address and had used methamphetamine and marijuana. The violation report also stated that Watson had received another indictment in Casey Circuit Court.⁴ Based on these alleged violations, the Commonwealth moved to terminate Watson's pre-trial diversion. After the issuance of a bench warrant, Watson was arrested and while awaiting a hearing on the termination of his diversion, Watson

² Kentucky Revised Statutes ("KRS") 218A.1415.

³ KRS 218A.500(2).

⁴ 16-CR-00010.

was indicted in a third case⁵ for burglary in the second degree,⁶ possession of controlled substance in first degree, first offense, and possession of drug paraphernalia.

As a result of Watson's stipulation to the alleged violations in the two additional cases, the trial court terminated the pre-trial diversion from his first conviction. The Commonwealth subsequently entered into an agreement with Watson to settle all three pending cases. Watson pleaded guilty to all charges, accepting a five-year prison term in the two latter cases to run concurrently with the three-year prison term from the first case, for a total of five years' imprisonment. Once again, the Commonwealth recommended probation for a period of five years with one of the conditions being that Watson successfully complete drug court. The trial court accepted this recommendation and codified the parties' agreement in a judgment and order of probation entered on October 7, 2016.

Although Watson enrolled in drug court, he was discharged from the program because he was taking prescription drugs due to a car accident. Watson's probation officer was also concerned that Watson had failed to contact him after leaving the hospital. Despite an agreement to have Watson reassessed for drug

⁵ 16-CR-00056.

⁶ KRS 511.030.

court, he was unable to enroll because the drug court deemed him ineligible for participation due to the medications he was taking. The trial court allowed Watson to continue his court date so that he could provide documentation concerning his prescription medication. When Watson failed to appear at that court date, a warrant was issued, and he was again arrested.

Although Watson was evaluated for drug court for a third time, drug court again determined that he was ineligible for enrollment based on his refusal to accept the fact that he had substance abuse issues. The Commonwealth ultimately filed a motion to revoke Watson's probation due to his continued failure to fulfill the terms of his probation by enrolling in and completing drug court. After a hearing during which Watson stipulated to violating his probation, the circuit court revoked his probation entering specific findings that he had violated the terms of his probation and could not be effectively managed in the community.

This appeal followed.

STANDARD OF REVIEW

The standard for reviewing a trial court's decision to revoke probation requires a determination whether the trial court abused its discretion.

Commonwealth v. Lopez, 292 S.W.3d 878, 881 (Ky. 2009). In applying that standard, “[t]he test for abuse of discretion is whether the trial judge's decision was

arbitrary, unreasonable, unfair or unsupported by sound legal principles.”

Woodard v. Commonwealth, 147 S.W.3d 63, 67 (Ky. 2004).

ANALYSIS

In order to revoke Watson’s probation, the Commonwealth was required to prove by a preponderance of the evidence that he violated the terms of his probation and could not be effectively managed in the community.

Commonwealth v. Andrews, 448 S.W.3d 773, 777 (Ky. 2014). Furthermore, probation revocation proceedings are governed by statute:

Supervised individuals shall be subject to:

- (1) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community; or
- (2) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

KRS 439.3106.

At Watson’s probation revocation hearing, the Commonwealth offered evidence to support its contention that he had failed to comply with the

conditions of his probation and that his history demonstrated that he could not be effectively managed in the community. The trial court agreed, stating:

On the old court case he was on pre-trial diversion, then while on diversion, he gets indicted for a new felony case and has a new misdemeanor case and then we'll wrap up three felony cases with probation? I think his history with this court while on diversion would demonstrate that he cannot be effectively managed in the community because while he was given a wonderful opportunity and given diversion, he was charged with new offenses including new felony offenses while on diversion. And then was rewarded with probation. I think that's enough chances, Mr. Watson. Probation is hereby revoked and you are remanded to serve the remainder of your sentence.

Watson now argues that the trial court's decision to revoke his probation was an abuse of discretion. In attempting to excuse his inability to admit his drug addiction, Watson asserts that the addictive nature of drugs prevented him from admitting that he has a substance abuse problem. Watson insists that instead of revoking his probation, the trial court should have returned him to treatment, despite his prior failed attempts to enroll and attend drug court. We disagree.

On the basis of Watson's own testimony, the trial court found that Watson had violated the terms of his probation on multiple occasions and that he could not be effectively managed in the community. There is more than substantial evidence in this record to support the trial court's findings. In addition, in revoking Watson's probation, the trial court adhered to the statutory guidelines

set out in KRS 439.3106 and followed the legal precedent established in *Andrews*, *supra*. Nothing in the record suggests that the trial court's decision was “arbitrary, unreasonable, unfair or unsupported by sound legal principles.” *Woodward*, 147 S.W.3d at 67. Thus, we perceive absolutely no basis upon which we might conclude that the trial court’s decision to revoke Watson’s probation constituted an abuse of discretion.

CONCLUSION

Based upon the foregoing, we affirm the judgment of the Casey Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Julia K. Pearson
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General

John Paul Varo
Assistant Attorney General
Frankfort, Kentucky