

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001026-MR

AMANDA HILL

APPELLANT

v. APPEAL FROM LEWIS CIRCUIT COURT
HONORABLE ROBERT B. CONLEY, JUDGE
ACTION NOS. 15-CR-00047, 15-CR-00058, AND 15-CR-00064

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

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

ACREE, JUDGE: Amanda Hill appeals the Lewis Circuit Court's revocation of her probation. She believes the trial court erred by revoking her probation without fully complying with the mandatory criteria of KRS¹ 439.3106. We affirm.

¹ Kentucky Revised Statutes.

BACKGROUND

Hill pleaded guilty in three cases to: (1) trafficking in a controlled substance – second degree; (2) wanton endangerment – first degree; and (3) persistent felony offender – second degree. The Lewis Circuit Court sentenced her to imprisonment for fifteen years but probated that sentence for five years and diverted her to Lewis County Drug Court. When Hill began her probationary period, she was already on parole in a Fleming Circuit Court child support case. As a condition to her parole, she was required to participate in intensive, outpatient, substance abuse treatment. Unfortunately, she failed two drug screens – one for suboxone and one for alcohol.

Hill admitted to her probation officer that she used suboxone and alcohol. She was sent to the Women’s Hope Center as a graduated sanction. However, the Women’s Hope Center terminated her involvement. It stated Hill “exhibited behavior that suggests she built a barrier of resistance to the treatment process.” Termination from the program was a parole violation. Police arrested Hill at the Women’s Hope Center for that violation.

Hill’s parole officer filed a violation of supervision report. The report listed four violations: (1) failure to complete treatment for substance abuse; (2) failure to complete treatment for substance abuse – graduated sanction; (3) use of controlled substance – suboxone; and (4) use of alcohol. (Record (R.) at 77.)

Upon the filing of the report, the Commonwealth filed a motion to revoke her probation in the Lewis County prosecution for violating the court-ordered conditions.

The trial court held a revocation hearing on May 19, 2017. At the hearing, the trial court heard testimony that Hill: admitted to using suboxone and alcohol; could not be managed successfully in the community because she did not take advantage of the previous opportunities; and posed a danger to herself, or the public, because she failed to receive treatment. The trial court entered companion orders² that included findings that Hill “committed the following violations of the terms and conditions of probation:

1. Failure to attend treatment for substance abuse
2. Failure to complete treatment for substance abuse
3. Use of controlled substance – Suboxone
4. Use of alcohol[.]”

(R. at 94.) It also included a finding that Hill “constitutes a significant risk to the community at large and cannot be properly managed in the community.” The court also found “that graduated sanctions are inappropriate.” The second order

² There is some redundancy in the orders that is of no consequence. The first order is denominated an “Order Revoking Probation” that uses language from KRS 439.3106 without citing the statute. The second is a form entitled “Probation Revocation Hearing,” designed to account for the specific criteria of KRS 439.3106. Both were entered on May 19, 2017.

states that the proof of the violations also serves as proof that Hill is “a significant risk to . . . the community, in that . . . Defendant’s continued use of illegal substances makes it more likely that [she] will continue to commit crimes [and that her] failure to complete counseling is an indication of a return to a drug/rehab use and a likelihood that new Crimes will be committed” (R. 97). On this basis, Hill’s probation was revoked and she was remanded to the custody of the Department of Corrections to serve her term of imprisonment.

Hill’s appeal followed.

ANALYSIS

Hill argues that the trial court erred by revoking her probation without complying with the mandatory criteria established in KRS 439.3106. Regarding preservation of this error, she makes only the conclusory statement that “This issue is preserved.” This is not enough. The Rule governing briefs requires “a statement with *reference to the record* showing whether the issue was properly preserved for review and, if so, *in what manner*.” CR³ 76.12(4)(c)(v) (emphasis added). “It is not the function or responsibility of this court to scour the record on appeal to ensure that an issue has been preserved.” *Koester v. Koester*, 569 S.W.3d 412, 415 (Ky. App. 2019) (citing *Phelps v. Louisville Water Co.*, 103 S.W.3d 46 (Ky.

³ Kentucky Rules of Civil Procedure.

2003)). Nevertheless, this Court did examine the record and concludes that Hill did not raise her claim under KRS 439.3106 in the trial court.

When an error is not preserved, the reviewing court may engage in palpable error review pursuant to RCr⁴ 10.26, which provides:

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

However, palpable error review is not available automatically when the reviewing court determines the issue has not been preserved. “Absent extreme circumstances amounting to a substantial miscarriage of justice, an appellate court will not engage in palpable error review pursuant to RCr 10.26 unless such a request is made and briefed by the appellant.” *Shepherd v. Commonwealth*, 251 S.W.3d 309, 316 (Ky. 2008). Hill has not asked for palpable error review. We have examined the record and the arguments and conclude that there are no extreme circumstances amounting to a substantial miscarriage of justice in this case.

The Court has satisfied itself that substantial evidence supports the trial court’s decision to revoke Hill’s probation. We further find no merit in Hill’s argument that the orders revoking probation were deficient because they were in

⁴ Kentucky Rules of Criminal Procedure.

the nature of a form. All that is necessary are that statutorily required findings be made, and they were made in this case.

Finally, we find no error in the trial court’s conclusion that graduated sanctions were inappropriate. Graduated sanctions are “a wide range of accountability measures and programs for supervised individuals” that a court may impose when an individual violates the conditions of supervision. KRS 446.010(20). However, KRS 439.3106 “permits, but does not require, a trial court to employ lesser sanctions[.]” *McClure v. Commonwealth*, 457 S.W.3d 728, 732 (Ky. App. 2015). The trial court already attempted to impose graduated sanctions by way of the Women’s Hope Center, but Hill failed or refused to take advantage of that opportunity.

For the foregoing reasons, we affirm.

ALL CONCUR.

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