

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001563-MR

BRIAN PATTERSON

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KEN HOWARD, JUDGE
ACTION NO. 12-CR-00041

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT AND MAZE, JUDGES; HENRY, SPECIAL JUDGE.¹

MAZE, JUDGE: Brian Patterson appeals the order of the Hardin Circuit Court revoking his probation. We hold the trial court did not abuse its discretion and affirm.

¹ Special Judge Michael L. Henry sitting by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

In the fall of 2012, Patterson pleaded guilty to multiple drug offenses and was sentenced to three years' imprisonment, probated for five years. He was also ordered to serve weekends in jail for sixty days. A few weeks later, Patterson failed to appear for his weekend jail service. As a result, he accepted the Commonwealth's recommendation that he serve the remainder of his sixty-day sentence at once.

Sometime thereafter, Patterson began living with his girlfriend, Josephine Santillana. In July 2017, the Commonwealth moved to revoke Patterson's probation, alleging he had violated the terms of his probation by committing a new felony. At the subsequent revocation hearing, Officer Chris Brandon of the Radcliff Police Department testified that Santillana's uncle, John Hirsh, came to the police station on May 18, 2017, to report that Patterson had assaulted him with a knife. Officer Brandon testified that Hirsh reported that he went to Santillana's home and saw Patterson aggressively approach Santillana. When Hirsh attempted to intervene, he and Patterson got into an altercation, culminating in Patterson producing a knife and cutting Hirsh on the hand. Officer Brandon testified that he also reviewed hospital records and alleged Hirsh went to the hospital for treatment and told the staff "pretty much the same thing." The Commonwealth also introduced a photograph of Hirsh's injured hand. Santillana

testified for the defense, stating Patterson did not possess a knife on the day in question and did not assault anyone at the residence.

After taking the matter under submission, the trial court entered a written order revoking Patterson's probation. The trial court found Patterson violated the terms of his probation by physically injuring Hirsh with a knife. The trial court's order included express findings that Patterson constituted a significant risk to the community at large and showed he could not be appropriately managed in the community. This appeal follows.

We review a decision to revoke probation for an abuse of discretion. *Commonwealth v. Lopez*, 292 S.W.3d 878, 881 (Ky. 2009). Under the abuse of discretion standard, we will not disturb the trial court's ruling unless it was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

"In this Commonwealth, probation is a privilege rather than a right." *Sullivan v. Commonwealth*, 476 S.W.3d 260, 263 (Ky. App. 2015) (citing *Barker v. Commonwealth*, 379 S.W.3d 116, 122 (Ky. 2012)). The Commonwealth need only prove the probationer has violated the terms or conditions of his probation by a preponderance of evidence. *Id.* The Kentucky Rules of Evidence do not apply to revocation proceedings and reliable hearsay is admissible. *Id.* The officers involved in the revocation hearing do not have to conduct an independent

investigation or even have firsthand knowledge of the underlying facts to testify competently at a revocation hearing. *Id.* at 264.

However, the trial court’s discretion must be exercised consistent with KRS² 439.3106(1), which provides that a court may revoke probation “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 [the probationer] cannot be appropriately managed in the community[.]” The trial court must make “express findings,” supported by the evidence of record, as to both elements of KRS 439.3106(1). *McClure v. Commonwealth*, 457 S.W.3d 728, 731 (Ky. App. 2015).

Officers Brandon’s testimony was competent and sufficient to establish Patterson violated the terms of his probation. Still, Patterson argues the evidence at the revocation hearing did not support the trial court’s finding that he was a significant risk to the community at large and could not be managed within it. We disagree. Patterson had already violated the terms of his probation once and was given a lesser sanction. After being allowed to remain in the community under supervision, he got into an altercation and injured a member of the community with a knife. Based on the evidence before the trial court, its decision to revoke Patterson’s probation was not an abuse of discretion.

² Kentucky Revised Statutes.

Accordingly, the order of the Hardin Circuit Court is affirmed.

ALL CONCUR.

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