

RENDERED: NOVEMBER 15, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2017-CA-001933-MR

BOBBY WILLIAMS

APPELLANT

v. APPEAL FROM FULTON CIRCUIT COURT  
HONORABLE TIMOTHY A. LANGFORD, JUDGE  
ACTION NO. 10-CR-00091

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TAYLOR, K. THOMPSON AND L. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: Bobby Williams appeals from a Fulton Circuit Court order revoking his probation and imposing sentence. This case was previously before this Court and was remanded to the trial court to consider whether Williams's failure to abide by the terms of his probation constituted a significant risk to prior victims or the community at large, and whether Williams could be

managed in the community as required by Kentucky Revised Statutes (KRS) 439.3106(1). *Williams v. Commonwealth*, No. 2015-CA-001404-MR, 2017 WL 129118 (Ky.App. Jan 13, 2017) (unpublished).

In our prior opinion we summarized the facts as follows:

On October 28, 2010, Williams entered a plea of guilty in Fulton Circuit Court to one count of theft by unlawful taking (over \$500) and one count of complicity to theft by unlawful taking (over \$500). On November 10, 2010, he was sentenced to ten-years' imprisonment probated for five years.

On December 3, 2010, Williams was arrested in Tennessee on felony burglary and theft charges. After learning of the charges, the Fulton Circuit Court issued a warrant for his arrest on the grounds that he had violated his probation. The Circuit Court of Obion, Tennessee, sent a letter informing the Fulton Circuit Court that Williams had been accepted into the Obion County drug court program and would be allowed to remain in that program if the Kentucky court did not revoke his probation. In response to that letter, the Fulton Circuit Court recalled its warrant. An agreement was created whereby Williams's sentences in Kentucky and Tennessee would continue to be probated and he would attend drug court in Tennessee and be supervised by Tennessee probation officers.

In December 2011, Williams was terminated from the Tennessee drug court program and his Tennessee probation was revoked. He served out his sentence there and was released on June 17, 2014. Williams did not, however, report to probation officers in Kentucky, although evidence was presented at the revocation hearing that Williams was not given notice that he was expected to report back to Kentucky; nor were the

Kentucky probation officers notified that Williams had served out his sentence and been released.

Williams was subsequently arrested in Memphis, Tennessee, in June 2015. He was also charged in Fulton Circuit Court with criminal attempt to commit murder, first-degree wanton endangerment, first-degree assault, first-degree burglary, and being a persistent felony offender in the first degree [Case No. 14-CR-00070]. Allegedly, Williams had forced his way into a local motel room, pointed a shotgun at the female occupant, and pulled the trigger. When the shotgun failed to fire, Williams allegedly struck the victim in the face with the gun, causing serious injuries.

The trial court held a revocation hearing on July 15, 2015, at which Williams's probation officer testified. Williams did not present any witnesses or evidence at the hearing. He requested the court to delay issuing an order until after his new felony charges had been resolved. The trial court stated that the only reason it did not revoke his probation in February 2011 was that the Tennessee court had chosen to give Williams a chance at drug court.

The trial court's final judgment and revocation of probation found that he had violated the terms of his probation by absconding supervision since June 2014; for having pending new felonies; and for having committed felonies (burglary and felony theft) in Tennessee. As further grounds, the trial court cited Williams's failure to pay court costs as ordered. The trial court imposed the sentence of ten-years' imprisonment for the convictions of theft by unlawful taking and complicity to theft by unlawful taking.

*Id.* at \*1. This court concluded that the trial court failed to make the requisite findings under KRS 439.3106(1). *Id.* at \*3. Under that statute, a trial court

revoking a supervised individual's probation is required "to first find that 1) the probationer's failure to abide by the conditions of supervision constitutes a significant risk to prior victims or the community; and 2) the probationer cannot be managed in the community." *Commonwealth v. Andrews*, 448 S.W.3d 773, 776 (Ky. 2014).

On remand, the trial court held a second hearing. By that time, Williams had entered guilty pleas to first-degree assault and first-degree wanton endangerment in Case No. 14-CR-00070. The Commonwealth called a probation officer to testify, who gave the same account of Williams's probation violations as was given at the first hearing.

The trial court found that given the violent nature of the assault in Case No. 14-CR-00070, Williams posed a significant risk to the community and the assault victim. It further found that Williams could not be appropriately managed in the community because he had absconded supervision after serving his Tennessee sentence. The trial court further found that alternative sanctions were not available due to the violent nature of his violation and that he repeatedly failed to remain compliant under lesser restrictions, including his termination from the Tennessee drug court program. Williams's probation was revoked, and the ten-year sentence was imposed. This appeal followed.

In *Andrews*, the Court cautioned that KRS 439.3106 “does not upend the trial court’s discretion in matters of probation revocation, provided that discretion is exercised consistent with statutory criteria.” *Id.* at 780. The test for whether that discretion has been abused is whether the trial court’s decision was “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

The trial court found that the violent nature of Williams’s convictions in Case No. 14-CR-00070 made him a significant risk to the community. Specifically, the trial court found in its judgment revoking probation that the crimes involved the use of a gun. Williams barged into a hotel room, attempted to shoot the victim and then pummeled her with the gun. Under those facts, the trial court did not abuse its discretion.

We also disagree with Williams that he did not abscond supervision and, therefore, the trial court’s finding that he could not be appropriately managed in the community was an abuse of discretion. He argues that after his release from custody in Tennessee, he was unaware that he was required to report to a probation officer in Kentucky.

Williams’s argument is inconsistent with the record and belies common sense. On November 10, 2010, Williams was sentenced to probation for a term of five years. His probation did not expire until November 10, 2015.

Williams was informed of the terms and conditions of his probation and signed an acknowledgement to that effect which delineated the period of probation and directed him to report to his probation officer and inform his probation officer of any change in address. It is incredulous for Williams to argue he did not know that upon his release in Tennessee on June 17, 2014, he was required to report to his Kentucky probation officer. The trial court did not abuse its discretion in concluding that Williams could not be appropriately managed in the community. As the trial court found, Williams already had lesser restrictions than imprisonment, including probation and drug court, and failed to comply with those restrictions.

Williams's final argument is that the trial court could not consider that he committed an offense in Tennessee while on Kentucky probation, because it had previously declined to revoke probation based on that same conviction. Without any citation to authority, he states "[t]hat basis is *res judicata*."

The doctrine of *res judicata* is formed by two subparts: 1) claim preclusion, and 2) issue preclusion. Claim preclusion bars a party from re-litigating a previously adjudicated cause of action and entirely bars a new lawsuit on the same cause of action. Issue preclusion bars the parties from relitigating any issue actually litigated and finally decided in an earlier action.

*Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 464-65 (Ky. 1998) (footnote and internal citations omitted). Although Williams does not even hint

which subpart he relies upon, neither has any application in this probation revocation proceeding. The reason the trial court did not revoke Williams's probation in 2011 was because he was to complete drug court, which he did not do. Moreover, after 2011, Williams committed new and violent felonies in Kentucky that support the revocation of probation.

For the reasons stated, the order of the Fulton Circuit Court revoking Williams's probation is affirmed.

ALL CONCUR.

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