

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000465-MR

JEFFERY A. DUNKERSON

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 00-CR-00029

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

DYCHE, JUDGE. Jeffrey A. Dunkerson appeals from an order of the Henderson Circuit Court revoking his conditional discharge (KRS 532.040) and sentencing him to three years' imprisonment. We affirm.

Dunkerson was indicted on January 11, 2000, by the Grand Jury of Henderson County for having sexual contact with a female child less than twelve years old. First Degree Sexual

Abuse, KRS 510.110. On April 19, 2000, Dunkerson entered a plea of guilty to the charge, and on June 5, 2000, he was sentenced to one and a half years' confinement. After service of that sentence, he was subject to a three-year period of conditional discharge. KRS 532.043. The conditions included attendance at a Sex Offender Treatment Program (SOTP), evaluation for "assaultive behavior," to work toward obtaining his GED, and to pay a \$10.00 per month supervision fee.¹

On November 21, 2001, the Commonwealth moved the trial court to revoke Dunkerson's conditional discharge for the following reasons: failure to attend the SOTP; failure to report as directed to his Probation/Parole Office; and being arrested on the charges of DUI, Evading the Police, and Driving on a Suspended License. The motion was granted, and this appeal followed.

The sole assertion of error is that the trial court abused its discretion by revoking his conditional discharge without properly considering whether Dunkerson had the ability to travel to the SOTP; such a burden, he argues, is "onerous and impossible for him to achieve." He claims he had a car, but no valid driver's license, and no insurance on the vehicle.

¹ The conditions were testified to by the probation/parole officer supervising Dunkerson. There is nothing in writing in the record, other than the "violation report," to indicate the conditions of his discharge. It would be much better practice for these written conditions to be in the record, and acknowledged by the defendant.

Dunkerson contends that it was the court's duty to somehow become aware of this problem, and fashion a remedy for his purported lack of transportation. We disagree. If he was having such a problem, it was incumbent upon him to report this difficulty to his probation/parole officer on one of his regular visits; by failing to keep these visits, and by ignoring the alleged transportation rather than seeking relief from the court, Dunkerson became the author of his own misery. While we are not without sympathy for his predicament, he failed to take any action to alleviate same, and instead engaged in a course of conduct almost certainly ending in reincarceration. We find no abuse of discretion. The order of the Henderson Circuit Court is affirmed.

ALL CONCUR.

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