

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001409-MR

STANLEY CURTIS MASSEY

APPELLANT

v. APPEAL FROM FULTON CIRCUIT COURT
HONORABLE WILLIAM LEWIS SHADOAN, JUDGE
ACTION NO. 98-CR-00043

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; KNOPF AND SCHRODER, JUDGES.

EMBERTON, CHIEF JUDGE. Stanley Curtis Massey appeals from an order of the Fulton Circuit Court finding that he violated the terms of his probation and directing that his probation be revoked. He alleges that the trial court violated his constitutional rights under the United States and Kentucky Constitutions when it revoked his probation without permitting him to undergo further alcohol and drug rehabilitation. We affirm.

In 1996, Massey entered a plea of guilty to criminal possession of a forged instrument, first degree. After being sentenced to probation in Kentucky, he was approved for probation supervision in Missouri. Despite enrollment in two different in-house drug treatment programs, Massey continued to be plagued by alcohol and drug abuse. He was convicted of DUI in Missouri, was involved in a domestic dispute, and found to be in possession of marijuana. He was also convicted of possession of a firearm while intoxicated.

In September and November 2001, Massey tested positive for marijuana use and a warrant was issued for his arrest on the charge of probation violation, and on May 9, 2002, he appeared in the Fulton Circuit Court for a probation revocation hearing. After reading the numerous violations contained in the probation supervision report, Massey admitted the allegations but pleaded that instead of probation revocation, he be given an additional chance to undergo substance abuse treatment. The court revoked Massey's probation.

Massey contends that it was fundamentally "unfair" for the court to revoke his probation without allowing him a third chance to successfully complete a drug and alcohol rehabilitation program. There is no constitutional right to

continuation of a probated sentence.¹ And, there is no dispute that Massey was given a hearing and was represented by counsel. The minimum requirements of due process were met.²

Massey admits that he committed numerous probation violations all of which he attributes to his substance abuse problems. To no avail, he has had numerous opportunities to correct his problem. Neither the concept of fundamental fairness nor the Constitution guarantees him yet another chance to rehabilitate.

The order revoking probation is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Laura Roberts Horsman
DEPARTMENT OF PUBLIC ADVOCACY
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General

Elizabeth A. Heilman
Assistant Attorney General
Frankfort, Kentucky

¹ Tiryung v. Commonwealth, Ky. App., 717 S.W.2d 503 (1986).

² Rasdon v. Commonwealth, Ky. App., 701 S.W.2d 716 (1986); Kentucky Revised Statutes (KRS) 533.050(2).