

RENDERED: December 23, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002570-MR

CHRISTOPHER HENSON

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 98-CR-00461

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: SCHRODER AND TACKETT, JUDGES; EMBERTON, SENIOR JUDGE.¹

SCHRODER, JUDGE: Christopher Henson (Henson) appeals the revocation of probation on a contempt conviction.² Finding no abuse of discretion, we affirm.

¹ Senior Judge Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

² This appeal is being heard with the same panel hearing appeal No. 2003-CA-001613-MR.

On July 30, 2001, Henson was in circuit court on another matter when he was charged with contempt of court. A hearing was held on August 6, 2001. He was found guilty and sentenced to six months in jail, to serve seven days with the remainder probated for two years with active supervision. That conviction and sentence was affirmed by a panel of this Court in appeal No. 2001-CA-001841-MR.

On September 20, 2001, Bill Menefee, Henson's probation officer, and another officer conducted a routine visit to Henson's home which he shared with his mother. They found eight cans of beer and a quarter-full bottle of whiskey in the refrigerator, six razor box cutters in a dresser drawer, a full box of .380 automatic cartridges, an empty holster, a gun cleaning kit in a dresser drawer, a police scanner in the family room, and pornographic material about Henson's bedroom. Henson was charged with violation of probation.

The circuit court held a probation violation hearing on November 5, 2001. Menefee testified as to what was found in the home, as well as that the conditions of probation, and that Henson had signed a statement acknowledging the conditions. On cross-examination, Menefee acknowledged Henson's mother had claimed the alcohol as her own; that he was not present when Henson was supposedly informed of the probation department's conditions; that the razor box cutters were not dangerous

instruments under the circumstances presented, but were considered deadly weapons under a condition limiting Henson to possession of nothing more dangerous than a pocket knife; that Henson may have indeed said that he had forgotten that the ammunition was there; that the police scanner was actually not prohibited by any condition of probation or otherwise illegal to possess; and that conditions respecting pornographic material turned on the belief that Henson was subject to the Sex Offender Registration Act. The circuit court found him guilty and entered an order revoking Henson's probation, ordering him to serve the remainder of the six-month sentence.

On appeal, Henson argues that the court's findings were clearly erroneous and the revocation order was an abuse of discretion. More specifically, Henson argues that the court revoked probation for all of the above reasons. While the possession of a police scanner was not a violation of a condition or illegal, and the allegation concerning possession of pornographic materials assumed he was a registered sex offender (in fact, he was sentenced for contempt), there are other conditions he violated that support the probation revocation.

In a previous appeal, Case No. 2001-CA-001752-MR, a panel of this Court held Henson was not required to register as a sex offender and ordered his name removed from the registry.

As to the possession of a police scanner, KRS 432.570(4)(c) does allow an individual to possess a scanner at his place of residence if it is not capable of transmitting. That leaves probation revocation for possession of alcohol, a deadly weapon, and ammunition. The question now becomes whether the remaining violations are enough to revoke Henson's probation or whether we must send it back for reconsideration. KRS 533.020 allows a court to grant probation in lieu of jail time, and allows the court to place conditions on that probation. The violation of any one could result in the revocation of probation. KRS 533.020(1). In Messer v. Commonwealth, Ky. App., 754 S.W.2d 872 (1988), a probationer was alleged to have violated three conditions of probation. On appeal, a panel of this Court said, "whether the trial court revoked upon one violation or three is of no consequence to the appellant so long as the evidence supports at least one violation." (emphasis added.) Id. at 873.

In the case sub judice, Henson was found to have violated terms of his probation. The deadly weapon, the razor box cutters, was not his mother's, and the ammunition was admittedly his from a gun he previously owned. If the alcohol belonged to his mother, it was nevertheless not to be in the same house. Even if we excuse the alcohol and blame it on his mother, Henson had two items that were his, either of which

could result in his probation being revoked. Clearly the trial court did not err in finding Henson violated terms of his probation and did not abuse its discretion in revoking his probation. We are limited in our review to determining whether the trial court abused its discretion. See Dunson v. Commonwealth, Ky. App., 57 S.W.3d 847, 848 (2001). Finding no abuse, we must affirm.

For the foregoing reasons, the probation revocation order of the Kenton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Irvin J. Halbleib
Appellate Public Advocate
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III
Attorney General of Kentucky

Elizabeth A. Heilman
Assistant Attorney General
Frankfort, Kentucky