

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000210-MR

DANNIE DALE BYRD, II

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
INDICTMENT NO. 02-CR-00133

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: DYCHE, GUIDUGLI, AND McANULTY, JUDGES.

DYCHE, JUDGE. Dannie Dale Byrd II appeals from an order of the Fayette Circuit Court denying his motion for shock probation (KRS 439.265) without a hearing. We affirm.

Byrd entered a guilty plea to Robbery, Second Degree, Possession of a Controlled Substance, and Possession of Drug Paraphernalia, receiving sentences of five years, twelve months and twelve months, respectively. Within the statutory period, he filed a motion for shock probation, asserting that the trial

court had, in essence, promised to grant his motion at the sentencing. The motion was denied without a hearing, and this appeal followed.

KRS 439.265(2) reads, in part,

(1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.

(2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.

The statute clearly gives the trial court discretion on whether to conduct a hearing on the motion. The order granting or denying is not reviewable. We find no abuse of

discretion in the denial of the hearing; and, even if we did,  
Byrd has no right for us to review the trial court's decision.

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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