

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-000496-MR

ROBERT L. HILL

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE STEPHEN A. HAYDEN, JUDGE  
ACTION NO. 01-CR-00057

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: BARBER, KNOPF, AND TACKETT, JUDGES.

TACKETT, JUDGE: Robert Hill appeals from an order of the Henderson Circuit Court revoking his probated sentence and remanding him to custody to serve the remainder of a twelve-month sentence on charges of criminal coercion and operating a motor vehicle while his license was suspended for driving under the influence. At issue is Hill's contention that the trial court erred in revoking his probation. Murphy v. Commonwealth, Ky. App., 551 S.W.2d 838 (1977), outlines the due process rights afforded to a person on probation. Because we agree with Hill's contention that the trial court's order failed to state the

evidence relied on in support of its decision to revoke probation, we vacate the trial court's order and remand this case for further proceedings.

Hill was originally indicted on charges of custodial interference and operating a motor vehicle on a DUI suspended license. He pled guilty to the amended charge of criminal coercion and the traffic charge and was sentenced to twelve months and ninety days respectively with the jail sentences to run concurrently. Hill's first motion for shock probation, filed one month after he was sentenced to jail, was overruled. The trial court granted Hill's second motion for shock probation on December 23, 2002, although the written order of probation is not found in the record. On December 27, 2002, the trial court issued a warrant for Hill's arrest stating that it had probable cause to believe he had violated the terms of his probation by committing a new offense. The arrest warrant was attached to an affidavit from Hill's probation officer alleging that Hill had violated the terms of a domestic violence order issued to protect his estranged wife and that the police were seeking charges of fourth-degree assault and violation of a DVO against Hill.

The trial court held a probation revocation hearing the following month. Hill's wife and mother-in-law testified that he had struck his wife during an argument, and Hill's

counsel was present to cross-examine them regarding their account of events. Hill also had the opportunity to testify in his defense and denied assaulting his wife. He also stated that he had never been informed of the terms of his shock probation and that he first met his probation officer on December 27, 2002, which was after the alleged assault on his wife. At the conclusion of the hearing, the trial court entered an order which found that Hill had violated his probation by committing a new offense, revoked his probation, and ordered him to serve out the remainder of his sentence. This appeal followed.

Hill argues that he was denied due process because he was unaware of the conditions of his probation, the evidence was insufficient to prove that he violated the terms, he should not have been revoked for the alleged violation, and the trial court failed to state in writing the evidence which supported his revocation. We will deal first with the non-dispositive issues raised by Hill. First, with regard to his contention that he was not advised about the terms of his shock probation, Hill has cites our prior decision in the Murphy case as outlining all of the due process rights he is entitled to in a probation revocation proceeding. The rights listed in Murphy are as follows:

- (1) a written notice of the claimed violations of [probation] are served, (2) a disclosure of the evidence to be used is

made, (3) an opportunity is granted to be heard in person, present witnesses and documentary evidence, (4) confrontation and cross-examination of witnesses is afforded (unless a specific finding for good cause is made to the contrary), (5) a neutral and detached hearing body conducts the procedure and (6) a written statement is made by the fact finder(s) as to the evidence relied on and the reasons for revoking [probation].

Supra at 840. Murphy makes no mention of requiring a written order informing a defendant of the terms of his probation.

Also, the record reflects that Hill did receive a written notice of the alleged violation (new offenses committed while on probation) and the evidence against him (parole officer's affidavit relating to criminal domestic violence allegations), an opportunity to be heard and present evidence, an opportunity to cross-examine witnesses against him, and a neutral fact finder presiding over the hearing.

Next, Hill's claim that the evidence at the probation revocation hearing was insufficient to prove that he violated the terms of his probation relies on a misunderstanding of the meaning of committing new offenses. Evidence was introduced that Hill's wife had a DVO against him and that he struck her, knocked her down, threatened additional violence toward her and caused her injuries for which she sought medical treatment. It was unnecessary for the Commonwealth to introduce evidence that Hill had been charged with or convicted of another crime, only

that he had committed criminal acts. Hill's third contention is that the trial court should not have revoked his probation because he testified that he did not commit an acts of violence toward his wife and her testimony and that of his mother-in-law was not believable. Nevertheless, Hill fails to show any abuse on discretion in the trial court's decision to believe his wife and mother-in-law rather than his own self-serving testimony.

Finally, Hill argues that the trial court's order fails to state in writing the evidence relied on to support its decision revoking his probation. Indeed, the trial court's order simply states in relevant part as follows:

The Court having conducted an evidentiary hearing in which Defendant had the opportunity to call or examine witnesses and present proof; and the Court being otherwise sufficiently advised does now hereby FIND and ADJUDGE that the Defendant violated a term of his probation by committing another offense. . . .

While the trial court's order makes clear its reason for revoking Hill's probation (commission of a new offense), it does not contain any written statement of the evidence relied on by the trial court in reaching this conclusion. Our prior decision in Murphy unequivocally states that the fact finder must make a written statement of the evidence relied on in addition to the reason for revoking probation. Thus, we are bound to vacate the trial court's order revoking Hill's probation and remand this

case for a new order from the trial court which states in writing the evidence supporting its conclusion that Hill violated his probation by committing a new offense.

The order of the Henderson Circuit Court is vacated and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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