

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000685-MR

STEVEN CHANDLER

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE LEONARD L. KOPOWSKI, JUDGE
INDICTMENT NO. 98-CR-00277

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; COMBS AND DYCHE, JUDGES.

DYCHE, JUDGE. Stephen Chandler appeals from an order of the Campbell Circuit Court revoking his probation and sentencing him to five years' imprisonment for Wanton Endangerment, First Degree. Finding no error by the trial court, we affirm.

Chandler entered a plea of guilty to the above offense on September 12, 2000. His five year sentence was probated for five years. He was allowed to transfer his supervision to Ohio; on December 19, 2001, he pled guilty to Receiving Stolen

Property in Ohio and was sentenced to "Community Control" (probation). As a result of this new conviction, on October 17, 2002, his Kentucky probation officer filed an affidavit with the Campbell Circuit Court detailing this new offense and seeking a hearing to determine if Chandler had violated the terms of his Kentucky probation.

On March 11, 2003, the Commonwealth moved the court to revoke his probation; a hearing on the motion was set for March 21, 2003. During the hearing, Chandler was represented by counsel and admitted to the allegations contained in the affidavit of his probation officer. The trial court granted the motion, revoked his probation, and sentenced him to five years' incarceration, with credit for time already served. This appeal followed.

Chandler's brief admits that none of the alleged errors was preserved for our review. We will nonetheless consider his arguments out of an abundance of caution and consideration for his rights.

Chandler first argues that the ten-day notice of the hearing to revoke was not sufficient to allow him to build an effective defense to the charge that he had violated his probation. We find no such error. The charges were simple: did he receive another conviction while on probation, and, if so, did that violate the terms of his probation? He had

adequate time to prepare for the hearing and defend the charges against him.

Chandler next maintains that he was entitled to a preliminary hearing to determine if there was probable cause to hold him for a hearing on the merits. We find no such requirement. A court of competent jurisdiction conducted the hearing on the Commonwealth's motion. He had notice, an opportunity to be heard, and was represented by counsel. There was no violation of his rights.

Chandler argues that the trial court did not make sufficient findings concerning his violation of the terms of his release. He stipulated to the charges. No further findings were necessary.

Chandler finally argues that he was statutorily entitled to have his Kentucky sentence run concurrently with the Ohio sentence.¹ He claims that KRS 533.040(3) mandates such a result in that his hearing was not held within ninety days of the time the grounds for revocation came to the attention of the probation officer. This argument is moot. The order appealed from does not state whether the sentences are to run consecutively or concurrently, and they must therefore run concurrently. KRS 532.110(2). The prohibition against a

¹ The brief filed on Chandler's behalf states that "his final sentencing looked like an act from the Three Stooges." This comment is a gross exaggeration, inappropriate, and out of place. Counsel is admonished that such statements should not be made in filings with this Court.

concurrent sentence for an offense committed while on probation does not apply to the "old" offense, but the "new" offense, which, in this case, would be the Ohio conviction. Gavel v. Commonwealth, Ky., 674 S.W.2d 953 (1984); Kassulke v. Briscoe-Wade, Ky., 105 S.W.3d 403, 407-8 (2003).

The order of the Campbell Circuit Court is affirmed.

ALL CONCUR.

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