

RENDERED: December 30, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-001264-MR

HILDRETH YOUNG

APPELLANT

v. APPEAL FROM MONROE CIRCUIT COURT
HONORABLE PAUL BARRY JONES, JUDGE
ACTION NO. 99-CR-00033

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON, KNOPF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Hildreth Young appeals the revocation of his probation for the commission of a subsequent offense before he was convicted of the subsequent offense. Probation revocations depend on proof of violation of a condition of probation. It is not necessary to prove the violation through a criminal conviction. The two charges are separate, the proceedings are

separate, and each has separate penalties. The two proceedings are independent of one another, hence we affirm.

Hildreth Young (Young) entered a plea of guilty to six counts of wanton endangerment, first degree¹ and received five years' imprisonment on each count, to run concurrently. He was to serve sixty days with the balance probated for five years with numerous conditions, one of which was to "[n]ot commit another offense. . . ." Subsequently, Young was charged with threatening three city employees with a rifle. At the same time, the Commonwealth moved to revoke his probation based on the same incident. The revocation hearing was held first and Young's probation was revoked. Young did not testify due to the pending criminal charges.

Young appeals, contending: the trial court erred in not requiring the criminal trial to proceed before the probation revocation hearing; the order used deprived him of his Sixth Amendment right to a jury trial; and that he was deprived of his Fifth Amendment and Fourteenth Amendments right to remain silent because, if he did testify at the probation revocation hearing, those statements could be used against him in the subsequent trial.

In Tiryung v. Commonwealth, Ky. App., 717 S.W.2d 503, 504 (1986), a panel of this Court stated, "it is not necessary

¹ KRS 508.060.

that the Commonwealth obtain a conviction in order to accomplish revocation of probation." The two are separate proceedings with different burdens. "[T]he burden of proof required to revoke probation is 'merely proof of an occurrence by a preponderance of the evidence,' whereas a conviction requires proof beyond a reasonable doubt." Myers v. Commonwealth, Ky. App., 836 S.W.2d 431, 433 (1992) (citations omitted), overruled on other grounds by Sutherland v. Commonwealth, Ky., 910 S.W.2d 235 (1995). Probation revocation hearings do not require a jury trial, but rest with the trial court's discretionary powers, "both in respect to initiation of a hearing and the disposition thereof." Ridley v. Commonwealth, Ky., 287 S.W.2d 156, 158 (1956). The sentence imposed for the probation violation is not the same as the sentence imposed for the subsequent criminal offense that resulted in the revocation of probation. Brown v. Commonwealth, Ky. App., 564 S.W.2d 21, 23 (1977). A probation revocation hearing is based on an earlier conviction that gave an appellant the full panoply of rights, while the subsequent revocation hearing has different due process rights. Childers v. Commonwealth, Ky. App., 593 S.W.2d 80, 81 (1979). "[T]he privilege against self-incrimination [was] not available to the probationer." Id. Probation is a privilege, not a right. Brown, 564 S.W.2d at 23. Probation revocation only imposes a sentence which was previously received. Id. Therefore, the

appellant's right to remain silent in his subsequent criminal trial was not violated by the separate probation revocation hearing.

For the foregoing reasons, the judgment of the Monroe Circuit Court is affirmed.

ALL CONCUR.

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