

RENDERED: SEPTEMBER 2, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001787-MR

HAROLD WAYNE PARRIGIN

APPELLANT

v. APPEAL FROM CLINTON CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 03-CR-00015

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; HENRY AND TACKETT, JUDGE.

TACKETT, JUDGE: Harold Parrigin appeals from a judgment of the Clinton Circuit Court convicting him of flagrant nonsupport and sentencing him to four years' imprisonment. He argues that the trial court abused its discretion in denying him a continuance on the day of trial, that the Commonwealth made inflammatory comments during the sentencing phase of the trial, and that the

trial court admitted irrelevant and prejudicial evidence in both the guilt and sentencing phases of the trial. We disagree and, thus, the trial court's judgment is affirmed.

Harold and Barbara Parrigin (now McWhorter) were married for thirteen years and had two minor children at the time of their divorce. Parrigin was ordered to pay \$100.00 per month child support to his ex-wife. He later suffered a back injury for which he was eventually able to draw disability. His child support payments were reduced to \$75.00 per month. Parrigin paid lump sum child support payments of several thousand dollars each in 1998 and 1999. Then, he stopped paying any money at all.

When Parrigin was indicted for flagrant nonsupport in 2003, he had a \$9,337.30 arrearage and had not paid any child support since 1999. On the day of his jury trial, Parrigin asked the trial court for a continuance, but his request was denied. The trial lasted a little over two hours and resulted in a guilty verdict. This appeal followed.

Parrigin argues that the trial court abused its discretion when it refused to grant him a continuance on the day of trial. Williams v. Commonwealth, 644 S.W.2d 335 (Ky. 1982). Prior to trial, the court had entered an order requiring reciprocal discovery of documentary evidence. The Commonwealth complied with the trial court's pre-trial discovery order, but

on the day of trial Parrigin asked for a continuance, stating that he had left some papers at home which he needed for his defense. It is important to note that Parrigin was represented by counsel and that his defense counsel was not the one making the request. Further, the case had been scheduled for trial for three months and Parrigin had no answer to the trial court's question of why he had waited until the morning of trial to bring these necessary documents to his attorney. Under the circumstances, we cannot say that the trial court's refusal to continue the case was an abuse of discretion.

In addition, Parrigin complains of inflammatory statements by the prosecutor in closing arguments and irrelevant prejudicial evidence in both the guilt and sentencing phases of his trial. He admits that none of these alleged errors is preserved, but requests this Court to review them under the palpable error rule. Kentucky Rule of Criminal Procedure 10.26 states as follows:

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

The evidence in this case indicated that Parrigin was over \$9,000.00 in arrears on his child support not having made a

payment in four years. Kentucky Revised Statute 530.050(2)

provides in relevant part:

(2) A person is guilty of flagrant nonsupport when he persistently fails to provide support which he can reasonably provide and which he knows he has a duty to provide by virtue of a court or administrative order to a minor or to a child adjudged mentally disabled, indigent spouse or indigent parent and the failure results in:

(a) An arrearage of not less than one thousand dollars (\$1,000); or

(b) Six (6) consecutive months without payment of support. . .

Parrigin admitted that he was aware of his child support obligation and that he had not paid any child support money since 1999. Further, he never contested that the arrearage was over \$1,000.00. He did seek to present evidence that he was not capable of providing support because of his back injury. This evidence consisted of a comparison of his bills with his income and testimony that friends and family members helped him financially at times. In contrast, McWhorter testified that Parrigin never wanted to pay child support, even when he had the money to do so, and that she had gone to court every month or two for nine years to try to get him to pay. Considering the overwhelming evidence against him, Parrigin fails to show that, without the evidence and statements he now complains of, the jury would have reached a different decision.

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

ALL CONCUR.

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