

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-001868-MR

JOHNNY PENN, JR.

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
INDICTMENT NOS. 01-CR-00264 & 02-CR-00018

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

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

DYCHE, JUDGE: Johnny Penn appeals from an order of the Boone Circuit Court revoking his probation and sentencing him to five years' imprisonment upon his conviction for Stalking in the First Degree (KRS 508.140). We affirm.

The stalking conviction was as a result of a domestic altercation in which he was originally charged, upon the complaint of his wife, with second-degree burglary and violation of a domestic violence order. The trial court granted his motion for probation, imposing certain conditions upon this privilege, including refraining from the use of alcohol.

Within eight months of his signing the conditions of his release, Penn was arrested for alcohol intoxication, and within ten months he ceased reporting to his probation officer. He was arrested at least two other times, for violation of an emergency protective order and criminal mischief, and another EPO/DVO violation and retaliating against a witness. Penn also failed to complete three substance abuse evaluations. These infractions were detailed in an affidavit filed by his probation officer in the motion to revoke Penn's probation.

Penn was given notice of the charges against him and of the hearing, was afforded counsel and a chance to cross-examine the witnesses against him and present witnesses on his behalf. Following the hearing, the trial court revoked his probation and sentenced him to the above-described punishment.

Penn now appeals, arguing that the trial court was in error for not setting out findings of fact that it had considered alternatives to incarceration, and found those alternatives to be inadequate, prior to revoking Penn's probation. We find no such requirement expressed in the applicable statutes, either explicitly or implicitly. Penn received all the process he was due. Rasdon v. Commonwealth, 701 S.W.2d 716 (Ky.App. 1986). Penn's citation to Bearden v. Georgia, 461 U.S. 660 (1983), is inapposite. There is no fine

or allegation of indigence here. Penn's actions were voluntary and willful.

Penn also argues that it was error for the trial court to allow his wife to be called as a witness against him. This error, if any, was unpreserved. In any event, it was harmless error, at worst. RCr 9.24. The order of the Boone Circuit Court is affirmed.

ALL CONCUR.

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