

RENDERED: FEBRUARY 17, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-000089-MR

CHARLES JOE DEAN, JR.

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE STEPHEN MERSHON, JUDGE
ACTION NO. 01-CR-001367

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; McANULTY, JUDGE; PAISLEY, SENIOR
JUDGE.¹

McANULTY, JUDGE: Appellant Charles Dean challenges his
probation revocation. He argues that probation officers
improperly searched a house he was in without having reasonable
suspicion to search. Additionally, he argues that the officers'
actions violated Department of Corrections' policies and

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the
Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and
KRS 21.580.

procedures. Finally, he argues that his probation revocation was not conducted in accordance with the minimum due process rights accorded probationers. We agree that appellant's due process rights were violated, and so we vacate and remand.

Following his conviction for illegal possession of a controlled substance and being a persistent felony offender in the first degree, appellant was given a ten year sentence, probated for five years. A little over a year later, the Commonwealth filed a motion to revoke appellant's probation. A Probation and Parole Special Supervision Report filed in the record stated that an anonymous letter was received by the Office of Probation and Parole alleging that appellant was dealing drugs at a particular residence. A Louisville Metro Police Department narcotics unit performed surveillance on the residence but nothing illegal was observed.

A month later, probation officers, along with Louisville Metro police officers, visited that residence as part of a "Night Vision" operation investigating persons on probation. Appellant was present and drugs were found at the residence. A hearing was held prior to revocation by the court. Appellant disputes on appeal the officers' account of what occurred, particularly their assertion that appellant gave them permission to enter the residence.

We do not reach appellant's arguments regarding the search because our review of the record leads us to conclude that appellant's due process rights to a proper hearing were violated. The United States Supreme Court set out the minimum due process rights for parole revocation proceedings in Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). These were subsequently held to be equally applicable to probation revocation proceedings. Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S. Ct. 1756, 1759-60, 36 L. Ed. 2d 656 (1973). Those minimum due process requirements are:

(a) written notice of the claimed violations of (probation or) parole; (b) disclosure to the (probationer or) parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking (probation or) parole.

Gagnon, 411 U.S. at 786, 93 S. Ct. at 1761-62, quoting from Morrissey, 408 U.S. at 489, 92 S. Ct. at 2604.

In this case, we find in the record no written statement by the finder of fact of the evidence relied on and reason for revoking probation. The trial court's order states

only that appellant's probation is revoked because he violated the conditions of probation. The particular conditions are not stated and no evidence in support of this conclusion is detailed. This does not meet the Gagnon standard. The failure of the trial court to make written findings of the grounds for revocation is an error which may be corrected by remand. Rasdon v. Commonwealth, 701 S.W.2d 716 (Ky. App. 1986). Therefore, we vacate and remand for further proceedings in order to comply with due process requirements. Accordingly, we do not reach the remainder of appellant's arguments as they require findings of fact for review and should be addressed following compliance with Gagnon.

ALL CONCUR.

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