

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-000890-MR

AMIEE J. BARRICKMAN

APPELLANT

v. APPEAL FROM CLINTON CIRCUIT COURT  
HONORABLE EDDIE C. LOVELACE, JUDGE  
INDICTMENT NO. 03-CR-00043

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI AND HENRY, JUDGES; POTTER, SENIOR JUDGE.<sup>1</sup>

HENRY, JUDGE: Amiee J. Barrickman appeals from orders of the Clinton Circuit Court voiding her participation in the court's pretrial diversion drug court program for violating the terms and conditions of that program and sentencing her to five years imprisonment for possession of methamphetamines. Upon review, we affirm.

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<sup>1</sup> Senior Judge John Woods Potter, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

On June 16, 2003, Barrickman was indicted by the Clinton County Grand Jury on counts of manufacturing methamphetamines in violation of KRS<sup>2</sup> 218A.1432, receiving stolen property in violation of KRS 514.110, possessing drug paraphernalia in violation of KRS 218A.500(2), and possessing marijuana in violation of KRS 218A.1422. On July 7, 2003, she appeared in court with her attorney and entered a plea of "not guilty" to these charges.

On October 6, 2003, the Commonwealth made a proposal to Barrickman offering to amend the manufacturing methamphetamines charge to a possession of methamphetamines charge and to drop all remaining counts against her in exchange for a guilty plea and her testimony against other defendants involved in the case. The Commonwealth also indicated that it would recommend a five-year sentence on the possession charge to be pretrial diverted for five years with supervision. As part of this diversion, Barrickman would be required to enroll in and successfully complete the Clinton Circuit Court drug court program. Upon completion of this program, the possession charge would be dismissed. Barrickman agreed to these terms and, along with her attorney, signed off on the proposed offer and filed a signed "Motion to Enter Guilty Plea" and a signed "Motion for Pretrial Diversion of a Class D Felon." On the same day, the

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<sup>2</sup> Kentucky Revised Statutes.

trial court entered orders consistent with the Commonwealth's offer and recommendations and instructed Barrickman to enter and complete the drug court program.

On January 22, 2004, the drug court entered an "Order of Termination from Drug Court," finding that Barrickman had violated a number of terms and conditions of the drug court program. Specifically, Barrickman had multiple positive drug screens, had failed to appear for drug testing, had failed to attend the required number of twelve-step meetings, had failed to present the drug court with a signed statement from her doctor indicating that he had been made aware of her participation in the drug court program, and had indicated that she did not plan to enter a recovery center as required by the program. Barrickman was subsequently remanded to the custody of the Clinton County Detention Center and her case was docketed for sentencing, as her diversion agreement with the Commonwealth was conditioned on completing the drug court program.

On February 12, 2004, the Commonwealth filed a "Motion to Revoke Pretrial Diversion and Impose Sentence." Following a hearing conducted on February 16 and March 15, 2004, the trial court entered an order voiding Barrickman's participation in pretrial diversion because of her failure to complete the drug court program and scheduling a sentencing hearing. On April 5, 2004, the trial court entered an order finding Barrickman guilty

of the crime of possessing methamphetamines and sentencing her to five years imprisonment. This appeal followed.

Barrickman's sole contention on appeal is that her rights to due process were violated when she was not afforded counsel before being terminated from drug court, and when her counsel was not given notice before said termination. We initially note that Barrickman did not apprise the court of where this issue is preserved in the record, as is required by CR<sup>3</sup> 76.12(4)(c)(v).<sup>4</sup> From our own review of the record on appeal we have been unable to conclusively determine whether or not the matter was preserved for review. Nevertheless, we address Barrickman's argument on its substantive merits, as it can be decided by reference to existing case law that is directly on point.

Although Barrickman argues that the issue presented here is one of first impression, this is not the case. In Dunson v. Commonwealth, 57 S.W.3d 847 (Ky.App. 2001), the appellant argued that "since he was not represented by counsel at the Drug Court termination hearing, he was denied representation at a critical stage of the proceedings," and therefore his due process rights were violated. Id. at 849-50. This court, however, rejected this contention, concluding that

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<sup>3</sup> Kentucky Rules of Civil Procedure.

<sup>4</sup> This rule is made applicable by Kentucky Rules of Criminal Procedure ("RCr") 12.02.

the appellant's "attempt to elevate the drug treatment program to a critical stage of the revocation proceedings must fail." As we explained: "While this particular drug treatment program is known as the 'Fayette County Drug Court' and while it is operated through this state's Court of Justice, the 'Drug Court' is not a 'court' in the jurisprudence sense; it is a drug treatment program administered by the court system. Accordingly, [the appellant's] termination from this particular drug treatment program was not subject to due process protections any more than his participation in a private drug treatment program would have been, or his participation in any other rehabilitation program such as anger management counseling or a job training program." Id. at 850. Therefore, Barrickman's argument that she was entitled to counsel before being terminated from the drug court program must be rejected, as it is inconsistent with established precedent.

Moreover, as was the case with the appellant in Dunson, the record reflects that Barrickman was represented by counsel at the trial court's hearing on voiding her participation in pretrial diversion, and that she was afforded an opportunity to argue that she should not have been terminated from that program. See id. Consequently, as Barrickman has not presented anything suggesting that this was not the case, nor anything suggesting that her original guilty plea was

involuntary or that she did not understand the terms of her pretrial diversion, we cannot say that her due process rights were violated here.

The judgment of the Clinton Circuit Court is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR  
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