

RENDERED: APRIL 14, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001907-MR

STEVEN RAY MAYFIELD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE LISABETH HUGHES ABRAMSON, JUDGE
ACTION NO. 03-CR-001194

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: TACKETT AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE: Steven Mayfield appeals an order of the Jefferson Circuit Court revoking his probation. He alleges that his rights to procedural due process were infringed at the revocation hearing. Because a review of the record discloses no reversible error, we affirm the decision of the circuit court.

On July 10, 2003, Mayfield pled guilty to five offenses arising out of an automobile accident. In exchange for his

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

plea, the Commonwealth recommended sentences of one year on a wanton endangerment charge, one year on a charge of criminal mischief, twelve months on an assault charge, and 14 days plus a \$500 fine on a charge of driving under the influence.² The trial judge accepted Mayfield's plea, and, in accordance with the Commonwealth's recommendation, he was sentenced to a total of one year of imprisonment, probated for five years. The grant of probation was specifically contingent upon compliance with the following conditions during the period of probation:

- 1) Remain on good behavior and refrain from further violation of the law in any respect.
- 2) Comply with all instructions and conditions imposed by the Bureau of Corrections, Division of Probation and Parole.
- 3) Submit to random drug and/or alcohol urinalysis testing at the Defendant's expense.
- 4) Be evaluated for substance and alcohol abuse and psychological problems.
- 5) Receive and successfully complete any drug, alcohol, vocational and/or psychological counseling as recommended by Probation and Parole.
- 6) Pay court costs of \$100.00 within ninety (90) days.
- 7) Pay a supervision fee of \$500.00 at the rate of \$15.00 per month.
- 8) Maintain full-time employment as capable.
- 9) Work toward obtaining GED.

² At the conclusion of the revocation hearing the trial judge amended the charge of DUI second offense to DUI first offense on the basis that it appeared Mayfield had been improperly charged. The penalty remained the same.

The Commonwealth filed a motion to revoke Mayfield's probation on May 6, 2004 based upon the reports of probation and parole officers which were appended to the motion. The first report dated January 9, 2004, stated that an arrest warrant for Mayfield had been issued on January 3, 2004, based upon a criminal complaint alleging that he pulled a knife, threatened to stab his girlfriend's mother, and kicked in the driver's side door of her car causing \$300 in damages. Although Mayfield was charged with menacing criminal mischief and terroristic threatening stemming from that incident, he failed to report the charges within 72 hours as required by the conditions of his probation.

A February 5, 2004, special supervision report stated that Mayfield was cited on January 28, 2004, for speeding 16 miles over the limit and for operating a vehicle on a suspended license. Mayfield again failed to report the citation as required.

A third report dated March 31, 2004, indicated that since January 2004, Mayfield had generated five cases in Jefferson District Court. After updating the status of charges filed by his girlfriend's mother and informing the court that Mayfield had pled guilty to an amended charge of careless driving in the case concerning charges of speeding and driving on a suspended license, the reporting officer outlined three

sets of new charges filed during the month of March. On March 2, 2004, Mayfield was arrested on charges of possession of a controlled substance, promoting contraband and tampering with physical evidence. On March 17, 2004, Mayfield was arrested for tampering with physical evidence and failure to report address change to the Department of Transportation. On that same date he was charged for trafficking in a controlled substance and receiving stolen property under \$300. Of particular significance to this appeal, the report stated that Mayfield had been terminated from the New Beginnings drug treatment program:

Mr. Mayfield was enrolled in New Beginnings drug treatment program on 10-13-03, in accordance with the court's order that he be evaluated for substance abuse and to receive treatment recommended by probation and parole. Mr. Mayfield was terminated from New Beginnings due to "poor attendance."

Two additional reports were appended to the revocation motion.

A revocation hearing was scheduled for May 26, 2004. At the beginning of the hearing, Mayfield's counsel filed a CR 60.02 motion alleging that although Mayfield had pled guilty to DUI second offense, there was no evidence of a prior offense. The Commonwealth responded that it would recheck the record and that if counsel's allegation proved true, Mayfield could be re-sentenced. Counsel then moved to strike the Commonwealth's motion to revoke, arguing that the motion failed to comply with RCr 8.14 because it did not state with particularity the grounds

for the motion in that the basis for the motion was not set out in the motion itself, but was merely contained in reports appended to the motion. The trial judge responded that it was the custom and practice in Jefferson Circuit Court to attach the special supervision reports to revocation motions and that the reports speak for themselves. The trial judge also noted that it was obvious why Mayfield was in court on a revocation motion since he had generated a number of cases on various charges during the year, that it appeared he had been on a crime spree for months, and that he had been terminated from a required substance abuse program. Despite counsel's complaint that he would have to be prepared to respond to everything contained in the reports at the revocation hearing, the trial court ruled that there was adequate written notice and that counsel indeed would be required to address anything in the reports that would be a violation of the conditions imposed by the court's judgment and sentence of probation entered August 19, 2003. A new hearing date was set for June 25, 2004.

After hearing the testimony of two of Mayfield's probation officers, the trial judge concluded that he had failed to comply with the terms of his probation by failing to complete the substance abuse program as required by the judgment. Among other things, the trial judge specifically found that Mayfield had the requisite notice of his obligation to attend the program

as evidenced by his attendance for a few times before he decided not to attend. She therefore determined that it was appropriate to revoke Mayfield's probation and ordered him to serve the one-year sentence imposed on August 19, 2003.

The first argument advanced in this appeal is that the revocation motion filed by the Commonwealth is insufficient to provide him with adequate notice of the grounds for the motion. We disagree. In Robinson v. Commonwealth,³ this Court had occasion to examine the due process requirements attendant to probation revocation proceedings:

A probation revocation proceeding "is not a part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations." *Morrissey*, [*Morrissey v. Brewer*, 408 U.S. 471, 489 (1972)] *supra*. Indeed, criminal judicial proceedings and probation revocation hearings are quite dissimilar in both form and substance. As the United States Supreme Court has noted, "[r]evocation [of probation] deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions."

One of the minimum requirements of due process cited in that opinion is the provision of written notice of the claimed violations. A common sense reading of the Commonwealth's motion makes clear that adequate notice was afforded. The reports

³ 86 S.W.3d 54, 56 (Ky.App. 2002).

appended to the motion state in clear detail the actions the probation officer deemed to be a violation of the terms of Mayfield's probation. Despite counsel's protestations that the form of the revocation motion gave the prosecution an unfair litigation advantage, we fully agree with the trial court's assessment that the reasons for the revocation motion are painfully obvious from a reading of the written motion and supervision reports. We are thus of the opinion that it borders on the frivolous to suggest that Mayfield suffered due process deprivations solely by reason of the form of the motion.

Next, Mayfield argues that by allowing the division of probation and parole to select the appropriate substance abuse counseling program, the trial court improperly delegated to the division of probation and parole the ability to modify the conditions of his probation. Again, we disagree. The obligation to complete a substance abuse program recommended by the division of probation and parole was specifically spelled out in the judgment probating Mayfield's sentence. Although Mayfield's counsel attempts to inject confusion as to the explicit nature of the counseling requirement, it is clear from the evidence adduced at the hearing that Mayfield was well-aware of his obligation to complete the program selected. The trial judge properly observed that the best evidence of Mayfield's understanding of his obligations under the judgment is the fact

that he enrolled in the program selected and attended for a time. The trial judge was well-within her authority to delegate to the division of probation and parole the selection of a program best suited to Mayfield's needs.

Furthermore, we fail to see the relevance of the imposition of a "no-contact" requirement with a minor named Miranda Ellis to the revocation of Mayfield's probation. Whether the division of probation and parole had authority to add this condition is of no consequence where the trial judge specifically stated she was not considering the alleged violation of the no-contact requirement. Because it had no bearing on the decision to revoke, imposition of the no-contact requirement cannot constitute error on appeal.

Mayfield's third allegation is that the trial court improperly revoked his probation based merely upon a finding that he had an indicted offense, without making the requisite finding that he had in fact violated the law. After finding that Mayfield had violated the conditions of his probation by failing to attend substance abuse counseling, the trial judge noted that he also had been indicted on burglary charges and that he had given authorities a taped statement outlining his involvement in that crime. Even were we to construe the use of that charge as error, it has no bearing on the result of the proceeding because revocation was properly supported by the

finding as to Mayfield's violation of the counseling requirement.

Finally, Mayfield argues that the trial judge's written order on the revocation motion is insufficient in that it determined only that he had violated the terms of his probation without addressing the second essential finding of whether his probation should therefore be revoked. Mayfield also challenges as error the failure to include in the written order a statement as to the evidence relied upon and the reasoning utilized in concluding that the probation should be revoked. We find no reversible error.

A similar argument was rejected by this Court in Rasdon v. Commonwealth⁴ which noted that because the court's findings were transcribed and included as part of the transcript of the hearing, it was not the type of error which required reversal. So it is in this case. The purpose of written findings is to allow the probationer to be apprised of the basis for the court's decision. The reasoning behind the revocation in this case is abundantly clear from a review of the hearing transcript. Thus, the error, if any, is entirely harmless.

In sum, while we agree that Mayfield was entitled to the full range of due process protections identified in *Morrissey*, there is no question that he was substantially

⁴ 701 S.W.2d 716, 719 (Ky.App. 1986).

accorded those rights in the course of this probation revocation proceeding. Although Mayfield advances a laundry list of technical procedural objections to the revocation proceedings, what is glaringly absent is an identification of any witnesses, evidence, and testimony he could have presented had the alleged procedural shortcomings been corrected. Indeed, Mayfield offers absolutely no rebuttal to the allegation that he violated the conditions of his probation as alleged by the Division of Probation and Parole. It is therefore clear beyond any doubt that the result of this proceeding would not have been different but for the alleged errors. Mayfield was not deprived of any fundamental right.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Vincent Aprile II
Louisville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Susan Roncarti Lenz
Assistant Attorney General
Frankfort, Kentucky

