

RENDERED: DECEMBER 22, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-002175-MR

LAMONT WILSON

APPELLANT

v. APPEAL FROM FULTON CIRCUIT COURT
HONORABLE WILLIAM LEWIS SHADOAN, JUDGE
ACTION NO. 02-CR-00094

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: ABRAMSON AND GUIDUGLI, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Lamont Wilson appeals from an order of the Fulton Circuit Court revoking his probation and reinstating his sentence of one year in prison. We affirm.

On March 27, 2003, Wilson was sentenced by the court to one year in prison for first-degree fleeing and evading

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

police. The court granted him shock probation on October 10, 2003. The court required Wilson to report to a probation officer and to pay his child support as two of the conditions of his probation.²

Wilson's difficulties with his probation officer began shortly after his release on probation. Wilson failed to report to his probation officer after November 19, 2003, and he avoided arrest by voluntarily reporting in January 2004 in response to a certified letter from his probation officer.

Because Wilson had a history of drug problems, his probation officer monitored him closely for drug use. When Wilson reported to his probation officer in January 2004, his probation officer told him his last drug test had been positive. The officer then had Wilson handcuffed and was preparing to take him to jail when it was discovered that the prior drug test had been negative rather than positive.

Wilson claims that his probation officer was thereafter "out to get him" and made his probation "unbearable" during the months of December through March. Wilson states that "[t]he straw that broke the camel's back" came on March 30, 2004, when his probation officer told him she would "lock him up" at his next scheduled visit unless he had his probation supervision fees and his child support arrears paid in full.

² Wilson had previously been sentenced to five years in prison for the offense of flagrant nonsupport.

Wilson states that he "believed he had no choice but to abscond."

Wilson absconded after the March 30, 2004, visit with his probation officer, and he was finally located in Tennessee and transported back to Kentucky for a probation revocation hearing in 2005. In September 2005, the circuit court revoked Wilson's probation and reinstated his one-year sentence.³ Wilson's appeal herein followed.

Wilson argues on appeal that the circuit court erred in revoking his probation because it failed to consider his choice of evils defense. He states that he absconded because his probation officer was out to get him and he would have been revoked for "no good reason."

On direct appeal, the standard of review for a trial court's revocation of probation is whether the court abused its discretion in revoking the appellant's probation. Tiryung v. Commonwealth, 717 S.W.2d 503, 504 (Ky.App. 1986). Wilson admitted on the record at his probation revocation hearing that he had not met his child support obligation and had failed to report to his probation officer after March 30, 2004. Thus, unless Wilson can assert a valid choice of evils defense, we can

³ The court also revoked Wilson's probation on his five-year sentence for flagrant nonsupport. Wilson apparently has not appealed from that order of revocation.

find no abuse of discretion in the circuit court's decision to revoke Wilson's probation.

The choice of evils defense is rooted in the common law and is codified in Kentucky Revised Statute (KRS) 503.030. See Senay v. Commonwealth, 650 S.W.2d 259, 260 (Ky. 1983). It is recognized as "a defense to a charge predicated upon an act which otherwise would be criminal." Id. For the choice of evils defense to apply, "it must be shown that defendant's conduct was necessitated by a specific and imminent threat of injury to his person under circumstances which left him no reasonable and viable alternative, other than the violation of the law for which he stands charged." Id. As noted in Greer v. Commonwealth, 748 S.W.2d 674, 676 (Ky.App. 1988), the choice of evils defense applies to only imminent physical injury.

Wilson has not cited to any place in the record where he raised a choice of evils defense. Further, in his brief he states that he absconded simply because there was "no good reason" for the court to revoke his probation. Like the defendant in Damron v. Commonwealth, 687 S.W.2d 138 (Ky. 1985), who testified that he escaped from jail because it was "a matter of life or death" due to his being ill, losing weight, and having severe chest pains while in jail, Wilson's allegations were not sufficient to invoke the provisions of KRS 503.030.

See also Beasley v. Commonwealth, 618 S.W.2d 179, 180 (Ky.App. 1981).

The order of the Fulton Circuit Court revoking Wilson's probation is affirmed.

ALL CONCUR.

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