

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-002589-MR

MARTINE WALLACE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 00-CR-000419

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; ACREE, JUDGE; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Martine Wallace appeals the order of the Jefferson Circuit Court denying him relief under CR 60.02 in accord with a plea agreement. We affirm.

On February 6, 2000, police observed Wallace run a stop sign at a high rate of speed. Following a pursuit, Wallace was apprehended, but assaulted the officers and fled from the scene. He was taken into custody shortly thereafter. Wallace was

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

indicted on several counts: 1) first-degree escape; 2) two counts of third-degree assault; 3) operating a motor vehicle on a license that has been revoked; 4) giving a peace officer a false name or address; 5) disorderly conduct; 6) third-degree criminal mischief; and 7) reckless driving. Wallace entered into a plea agreement for a sentence of 5 years of imprisonment. The Commonwealth recommended 3 years of probation with the conditions that he make restitution to the arresting officer for broken glasses and complete alcohol treatment. If Wallace successfully completed probation with "no violations of any type-technical or otherwise," then the Commonwealth would not object to a CR 60.02 motion vacating the judgment and clearing Wallace's record of the felony convictions. The Jefferson Circuit Court accepted the pleas and entered a judgment of conviction and sentence on October 16, 2000.

On November 15, 2001, the Commonwealth filed a motion to revoke Wallace's probation based on his admission to the use of alcohol and subsequent failure to comply with the requirements of the treatment program. Additionally, Wallace had failed to pay his public defender fee. At the time of the revocation hearing, Wallace had paid some of his fees and had entered another treatment program, so the court remanded the matter for a future date. On April 29, 2002, the Commonwealth filed a supplemental motion to revoke based again on Wallace's

admitted use of alcohol, failure to pay outstanding fees, and the failure to complete treatment. The trial court did not revoke probation and remanded the matter for sixty days. The next hearing was on July 1, 2002, at which the court was informed that Wallace had committed no new violations since the last hearing, but still had not paid his supervision or public defender fees. The revocation was again remanded. On September 29, 2005, Wallace filed a motion pursuant to CR 60.02 to vacate his sentence in accordance with the plea agreement. Wallace noted that he had completed probation two years earlier. The Commonwealth objected to the motion arguing that it was untimely and that Wallace had violated the terms of the plea agreement. The court found that there were numerous violations of probation and denied the motion. This appeal follows.

Wallace argues that the trial court erred by refusing to enforce the plea agreement because he completed probation without revocation and that the Commonwealth failed to prove that any of the violations did, in fact, occur.

Plea agreements are interpreted according to ordinary contract principles. O'Neil v. Commonwealth, 114 S.W.3d 860, 863 (Ky.App. 2003). If a defendant breaches a plea agreement, then he is no longer entitled to its enforcement. Id. Further, plea agreements are to be construed in their entirety. Id. A defendant cannot simply disregard portions of the agreement and

then enforce others. Id. The language at issue here is clear: "If the [defendant] successfully completes probation - no violations of any type - technical or otherwise." Wallace admitted to the use of alcohol during probation and exhibited a continuing disregard for the other conditions of his probation. Although the trial court did not revoke probation, Wallace's actions were nonetheless violations. If the agreement was to hinge on revocation rather than any type of violation, then that language could have been included.

Wallace next argues that the trial court erred by allowing the Commonwealth to rescind the agreement on the basis of alleged or unproven violations. This contention is clearly refuted by the record. Hearings were held on several occasions in this case where reports were filed with the court detailing numerous violations including alcohol use and the failure to comply with treatment requirements. Wallace never attempted to contradict any of this evidence. Again, simply because the trial court was lenient and did not revoke probation does not mean that violations of the plea agreement did not occur.

Accordingly, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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