

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2006-CA-000077-MR

MICHAEL VOGELSBERG

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 05-CR-230

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, JUDGE; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE; HOWARD,<sup>2</sup>  
SPECIAL JUDGE.

HOWARD, SPECIAL JUDGE: Michael Vogelsberg was convicted in the Muhlenberg Circuit Court of promoting contraband in the first degree, in violation of KRS 520.050, by possessing alcoholic beverages in a correctional facility. Vogelsberg, who was serving a life sentence in the Green River Correctional Complex, entered a conditional plea on December 20, 2005, in which he admitted to possessing the alcohol while

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<sup>1</sup> 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.

<sup>2</sup> Special Judge James I. Howard completed this opinion prior to the expiration of his Special Judge assignment effective February 9, 2007. Release of the opinion was delayed by administrative handling.

incarcerated, but reserved for appeal the issue of whether alcohol was “dangerous contraband” under 520.050. Having considered the record and the briefs filed herein, we affirm.

An attorney with the Department of Public Advocacy was appointed to represent Vogelsberg on appeal. On April 17, 2005, she filed a motion to withdraw as counsel and to file a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1397, 11 L.Ed.2d 493 (1967). An *Anders* brief is one in which the attorney states that she believes the appeal to be frivolous and knows of no legitimate grounds for appeal. By Order of May 10, 2006, this Court granted the motion to file the *Anders* brief, passed the motion to withdraw to the panel considering the merits of the case and granted Vogelsberg sixty (60) additional days to file a *pro se* brief in support of his appeal. He has not filed any such brief.

In the absence of an Appellant’s brief raising any issues on this appeal, we must affirm the judgment of the Muhlenberg Circuit Court and need not discuss any substantive issues. However, as it is clear from the conditional plea and from the briefs filed both by Vogelsberg’s former attorney and by the attorney for the Commonwealth, that the issue Vogelsberg wished to raise is whether alcohol is “dangerous contraband” under 520.050 and as that question is easily answered, we shall briefly address that issue.

The definitions applicable to KRS chapter 520 are provided in KRS 520.010. KRS 520.010(3) defines “dangerous contraband” as follows:

’Dangerous contraband’ means contraband which is capable of use to endanger the safety or security of a detention facility or persons therein, including, but not limited to, dangerous

instruments as defined in KRS 500.080, any controlled substances, *any quantity of an alcoholic beverage*, and any quantity of marijuana, and saws, files, and similar metal cutting instruments; (Emphasis added)

Thus, the legislature has specifically defined “dangerous contraband” to include “any quantity of an alcoholic beverage.” Vogelsberg admitted that he possessed alcoholic beverages in the prison. He was therefore in violation of KRS 520.050.

The motion of Appellant's counsel to withdraw is granted. The judgment of conviction entered by the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Euva D. May  
Frankfort, Kentucky

APPELLANT, *Pro Se*  
Michael Lee Vogelsberg  
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General

Michael L. Harned  
Assistant Attorney General  
Frankfort, Kentucky