

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000406-MR

JOHN J. RIGGS

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE ROBERT B. CONLEY, JUDGE
ACTION NO. 04-CR-00143 & 05-CR-00133

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; CAPERTON AND MOORE, JUDGES.

MOORE, JUDGE: The Appellant, John J. Riggs, seeks review of the Greenup Circuit Court's order revoking his probation. Riggs argues that he did not receive notice of probation violations. Upon careful review, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Riggs pleaded guilty to burglary in the second degree and was sentenced to five years in prison. While incarcerated, Riggs was allowed to participate in a substance abuse treatment program. However, shortly after Riggs enrolled in the substance abuse treatment program, he pleaded guilty to another second-degree

burglary charge.¹ Riggs was sentenced to seven-years' imprisonment, to be served consecutively with his prior five-year sentence. After Riggs completed the substance abuse treatment program, he moved the circuit court for shock probation, which the court granted. In the circuit court's order, it specified that completion of drug court was one of the conditions of Riggs's probation.

While enrolled in drug court, Riggs failed to comply with its rules.² A signed notice of termination of probation was sent to Riggs. The records show it was entered on December 6, 2006. The notice informed Riggs that he had violated the terms and conditions of drug court, and it set a probation revocation hearing for January 4, 2007. On that date, the circuit court held the revocation hearing.³

Riggs, his attorney, and the drug court coordinator were present during the hearing. The drug court coordinator testified that Riggs's drug court violations included failing drug screening tests, consorting with felons, leaving his restricted area without permission, and failing to appear for drug court. At the end of the hearing, Riggs requested another opportunity to comply with drug court. He did not deny that he had violated the terms of his probation. Following the hearing, the circuit court revoked Riggs's probation as stated in the January 25, 2007 order. This appeal ensued.

¹ Riggs stole two rifles from his uncle to purchase illegal drugs.

² Riggs was ordered to the Greenup Detention Center for violation of the terms of drug court on July 27, 2006, November 9, 2006, and November 17, 2006.

³ Although the Order dated January 25, 2007 provides that Riggs waived a hearing, the record discloses that a hearing had been held.

II. STANDARD OF REVIEW

We review the circuit court's determination regarding a motion to revoke probation for an abuse of discretion. *Tiryung v. Commonwealth*, 717 S.W.2d 503, 504 (Ky. App. 1986). "The test for abuse of discretion is whether the trial [court's] decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted).

III. ANALYSIS

Riggs argues that his due process rights were violated because he did not receive notice of the charges against him regarding the revocation of his probation. The Commonwealth argues that Riggs received sufficient notice via the notice of termination.

Riggs concedes he is raising this claim for the first time in his appellate brief, asking this Court to review it under RCr⁴ 10.26 as palpable error. Under a palpable error standard, this Court may grant relief if it finds error and if "manifest injustice has resulted from the error." RCr 10.26. We find no error by the trial court and certainly not one that rises to the palpable error standard.

In *Robinson v. Commonwealth*, 86 S.W.3d 54, 56 (Ky. App. 2002), this Court held that due process requires a probation revocation proceeding to comply with the requirements set forth in *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). According to the *Robinson* Court, those requirements are 1) written notice of the alleged probation violations; 2) disclosure to the probationer of the evidence supporting the violations; 3) opportunity for the probationer to be heard in person and to present evidence; 4) the right to confront and cross-examine witnesses;

⁴ Kentucky Rules of Criminal Procedure.

5) a factfinder that is neutral and detached; and 6) a written statement by the factfinder setting forth the evidence relied upon and the reasons for revocation. *Robinson*, 86 S.W.3d at 56 (quoting *Morrissey*, 408 U.S. at 489, 92 S. Ct. 2593). The resolution of Riggs's appeal turns on whether he received notice as required by *Robinson*.

At the revocation hearing, Riggs appeared with his attorney, and he cross-examined the Commonwealth's witness. More importantly, while Riggs was before the circuit court, he never claimed that he did not receive notice of the revocation proceeding and never claimed that he was not aware of the allegations underlying that action. In his brief, he supports this claim with nothing other than his own, unsworn, self-serving assertion. The record contains no evidence to support his claim.

The record reveals that on December 6, 2006, a notice of termination along with an attached affidavit was filed with the Greenup Circuit Clerk's Office. These documents set forth the time and date of the revocation hearing and set forth the allegations against Riggs. Moreover, the notice contained language that an attested copy had been sent to both Riggs and his attorney. Although it is not clear that Riggs's attorney received the notice, his attorney was present at the revocation hearing. Nonetheless, Riggs's receipt alone is sufficient to meet the notice standard under *Robinson* and *Morrissey*. In addition, the drug court coordinator provided sworn testimony regarding Riggs's violations, which Riggs did not dispute. These facts provide additional evidence to support that Riggs received adequate and sufficient notice.

There is no constitutional right to probation. *Land v. Commonwealth*, 986 S.W.2d 440, 442 (Ky. 1999). Riggs does not dispute he violated the terms of his

probation as testified to by the drug court coordinator. Given the facts of this matter, we find no error and affirm.

ALL CONCUR.

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