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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-001264-MR

JEREMY ADAM FORD

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JUDY VANCE MURPHY, JUDGE
ACTION NO. 15-CR-00025

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** ** *

BEFORE: ACREE, CALDWELL, AND LAMBERT, JUDGES.

CALDWELL, JUDGE: Jeremy Adam Ford appeals the revocation of his probation after being charged with new criminal offenses. Having reviewed the arguments of the parties and the pertinent caselaw, we affirm.

FACTS

Ford was placed on probation in late 2015, after pleading guilty to burglary in the first degree, burglary in the third degree, and theft by unlawful taking over \$500 and less than \$10,000. His ten-year sentence of imprisonment was probated for five years. He attained inactive supervision status in 2018 after having no violations, having paid restitution, and holding down a full-time job.

Shortly after the status change, Ford was charged with various offenses related to computer-based actions involving minors. The Commonwealth petitioned to revoke probation and a hearing was conducted. The trial court entered an order revoking probation and imposing the sentence of ten years' imprisonment. Ford hereby appeals the revocation.

STANDARD OF REVIEW

An appellate court reviews a trial court decision to revoke probation for an abuse of discretion. *Commonwealth v. Andrews*, 448 S.W.3d 773, 780 (Ky. 2014). A trial court abuses its discretion when its decision is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

ANALYSIS

Kentucky Revised Statute (KRS) 439.3106(1) states that defendants on probation shall be subject to:

(a) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community; or

(b) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

If a trial court finds that a probationer has failed to comply with the conditions of his or her probation and that he or she cannot be adequately supervised and managed in the community, the trial court has the authority to revoke the probation and impose the sentence originally probated.

In this matter, a probation revocation hearing was held by the trial court on February 28, 2019. The prosecution brought to the court's attention some of the conditions of the probation imposed upon Ford in 2016: that he commit no other offense, that he avoid injurious or vicious habits, and that he support dependents and meet his family responsibilities. The prosecution also presented testimony from the Kentucky State Police officer who investigated the new computer-based crimes that Ford was facing which begat the revocation motion.¹

¹ The allegations against Ford were particularly disturbing. He was alleged to have engaged in sexually explicit conversations with others on a website wherein he posted pictures of his

In *Lucas v. Commonwealth*, a panel of this Court reiterated that a decision to revoke probation shall be upheld if there is “evidence to support at least one probation violation.” 258 S.W.3d 806, 807-08 (Ky. App. 2008) (citing *Messer v. Commonwealth*, 754 S.W.2d 872, 873 (Ky. App. 1988)). For that reason, we will constrain our review to whether the new charges were sufficient reason to revoke Ford’s probation.

Ford argues, essentially, that there was not presented sufficient evidence of his guilt of the computer crimes to justify revocation. However, such is clearly not required at a probation revocation. Guilt beyond a reasonable doubt on new charges need not be proven to revoke probation; a charge itself is sufficient to support revocation. *Williams v. Commonwealth*, 462 S.W.3d 407, 410 (Ky. App. 2015). As was observed in the *Williams* opinion:

Indeed a conviction is unnecessary to support revocation based upon new charges. *Barker v. Commonwealth*, 379 S.W.3d 116, 123 (Ky. 2012), clearly holds that a trial court is at liberty to revoke probation before the ultimate resolution of the criminal case involving the new charge. *Barker* carefully analyzes the two burdens of proof and concludes that a conviction is not required as a condition precedent for revoking probation:

To sustain a criminal conviction requires proof *beyond a reasonable doubt*.
By contrast, “[p]robation revocation requires

children. Those pictures, while appropriate and non-pornographic, were accompanied by sexual banter about his children, who were quite young at the time.

proof by a preponderance of the evidence that a violation has occurred.” Because of the lower burden of proof required to revoke probation, a trial court could revoke probation before a jury convicts the probationer by finding him guilty beyond a reasonable doubt on identical facts. And a trial court could properly revoke probation on less evidence than is required for a jury to convict.

An individual’s probation may be revoked any time before the expiration of the probationary period when the trial court is satisfied by a preponderance of the evidence presented in a revocation hearing that the probationer violated a condition of probation. Although new charges may form the basis for revocation proceedings, a conviction on those charges is not necessary in order to revoke probation.

Id. at 410-11 (quoting *Barker v. Commonwealth*, 379 S.W.3d 116, 123 (Ky. 2012)).

We hold that the trial court had the authority to revoke Ford’s probation based on the new charges alone and, therefore, find it unnecessary to discuss the efficacy of any other reason offered for the revocation.

Ford also argues that the trial court failed to consider graduated sanctions in violation of KRS 439.3106.

KRS 439.3106 permits, but does not require, a trial court to employ lesser sanctions The elective language of the statute as a whole creates an alternative employed and imposed at the discretion of the trial court—discretion

the Supreme Court insisted the trial court retained in light of the new statute. Nothing in the statute or in the Supreme Court's interpretation of it *requires* the trial court to impose lesser sanctions prior to **revoking probation**.

McClure v. Commonwealth, 457 S.W.3d 728, 732 (Ky. App. 2015) (emphasis added) (citation omitted).

The trial court did, in fact, consider whether lesser alternatives to revocation were appropriate. The court found, based on the facts presented, that Ford posed a grave danger to his children and other children given the allegations and evidence presented at the revocation hearing and found that incarceration was the only way to protect the public. Ford argues that the trial court erred in revoking his probation and should have applied graduated sanctions, having "previously been successful on supervision," but the success of his prior probation is questionable as the new crimes charged were committed while on probation. The trial court duly considered graduated sanctions and determined such punishment was simply not sufficient to protect the public, especially given the nature of the allegations contained in the new charges.

CONCLUSION

We hold that the trial court did not abuse its discretion in revoking Ford's probation, as there was presented sufficient reason to so order given the new charges Ford was facing. We affirm the trial court's order.

ALL CONCUR.

BRIEFS FOR APPELLANT:

John Patrick Ward, Jr.
Louisville, Kentucky

BRIEF FOR APPELLEE:

Daniel Cameron
Attorney General of Kentucky

Aspen Roberts
Assistant Attorney General
Frankfort, Kentucky