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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0511-MR

BRENNAN BECK — APPELLANT

v.

APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN LYNN WILSON, JUDGE
ACTION NO. 23-CR-00421

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CETRULO, MCNEILL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Brennan Beck appeals from the Judgment of Conviction and Sentence entered March 21, 2025, by the Henderson Circuit Court denying his request for probation. After careful review, we affirm.

Background

Because Beck's appeal looks to the denial of probation at his sentencing, only a brief recitation of the underlying facts is necessary. On June 13, 2023, Beck fired a handgun multiple times into an occupied car. At the time of the shooting, he was sixteen years of age. On October 4, 2023, Beck was indicted in Henderson County as a youthful offender. He was charged with two counts of attempted murder, one count of first-degree wanton endangerment, and one count of first-degree criminal mischief.

On March 11, 2024, Beck pleaded guilty to amended charges of attempted assault, first-degree wanton endangerment, and first-degree criminal mischief. He received an aggregate sentence of twelve-years' incarceration and was ordered to pay restitution for damaging the victim's vehicle. Because Beck was a youthful offender, Beck was committed to the Department of Juvenile Justice (DJJ) until he reached the age of eighteen years and five months. At that time, Beck returned to the circuit court for a hearing to determine how he would serve the remainder of his sentence. Kentucky Revised Statutes (KRS) 640.030.

Prior to the sentencing hearing, Beck filed a motion seeking probation. The hearing was held on March 10, 2025. In support of Beck's motion, several DJJ providers testified about Beck's progress in DJJ rehabilitative

programs. He had completed several credits of high school education and received certifications with OSHA and the American Red Cross.

The providers also testified that Beck had demonstrated personal and emotional growth through active participation in substance abuse and anger management trainings. The Department of Public Advocacy (DPA) had formulated a supervision plan for Beck which included housing and employment; behavioral restrictions, *e.g.*, not associating with other known offenders; working with a mental health provider and complying with their directives; and submitting to drug tests. Beck was eligible for tuition at Kentucky public universities by virtue of having been a child in foster care.

After considering the testimony, the circuit court congratulated Beck on his progress. However, finding that probation would depreciate the seriousness of Beck's offenses, the court denied the motion for probation and ordered that Beck be incarcerated and delivered to the custody of the Department of Corrections (DOC) to serve his sentence. Record at 125-127. This appeal followed.

Standard of Review

This Court reviews sentencing decisions regarding probation for an abuse of discretion. *Howard v. Commonwealth*, 496 S.W.3d 471, 475 (Ky. 2016).

We will not overturn the circuit court unless "its decision was 'arbitrary, unreasonable, unfair, or unsupported by sound legal principles.'" *Id.* (quoting *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999)). Our review proceeds accordingly.

Analysis

A youthful offender is "any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court." KRS 600.020(76).[1] Beck was prosecuted as a youthful offender because he satisfied the following criteria: the attempted murder charge was a Class B felony (KRS 635.020(2)); the wanton endangerment and criminal mischief charges were Class D felonies (KRS 635.020(3)); Beck was sixteen years of age at the time the crimes were committed (KRS 635.020(4)(b)2.c.); Beck had previously been adjudicated as a youthful offender for a felony offense (KRS 635.020(3)); and Beck used a gun in the commission of his crimes (KRS 635.020(4)(b)).

If a youthful offender is convicted or enters a guilty plea in circuit court, they become subject to KRS 640.030 which dictates sentencing of youthful offenders. Pertinent to this case, "any sentence imposed upon the youthful offender shall be served in a facility or program operated or contracted by the

[1] Formerly Kentucky Revised Statutes (KRS) 600.020(74).

[DJJ] until . . . the youthful offender reaches the age of eighteen (18)[.]" KRS 640.030(2). At that time, the offender is returned to circuit court for disposition of the remaining sentence. The three available options are probation, continued treatment under DJJ supervision, or transfer to the custody of the DOC. *Id*.

In compliance with the statutory scheme, Beck served the beginning of his sentence in a DJJ treatment program. When he reached 18 years and 5 months of age,[2] he returned to circuit court for a sentencing hearing. Prior to the hearing, Beck filed a motion seeking probation for the remainder of his sentence. At the evidentiary hearing, he presented evidence in support of the motion. As noted, at the conclusion of the evidence and arguments, the circuit court imposed a sentence of incarceration and his custody was delivered to DOC.

As Beck points out, KRS 600.010 – the introduction section of the Kentucky Unified Juvenile Code – begins with stating that the legislation is intended to effectuate protection of children and the family. KRS 600.010(2)(a). However, the statute also states that "KRS Chapter 640 [the statutes related to youthful offenders] shall be interpreted to promote public safety and the concept that every child be held accountable for his or her own conduct through the use of

[2] The offender may be granted an additional five months to complete a training program. KRS 640.030(2)(b).

restitution, reparation, and sanctions, in an effort to rehabilitate delinquent youth[.]" KRS 600.010(2)(f).

The Kentucky General Assembly has unequivocally directed that "[a] youthful offender, who is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the same type of sentencing procedures and duration of sentence, including probation and conditional discharge, as an adult convicted of a felony offense[.]" KRS 640.030.

KRS 533.010(2) states:

> Before imposition of a sentence of imprisonment, the court shall consider probation, probation with an alternative sentencing plan, or conditional discharge. Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge, after due consideration of the defendant's risk and needs assessment, nature and circumstances of the crime, and the history, character, and condition of the defendant, including whether the defendant is a caretaker, probation or conditional discharge shall be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:
>
> (a) There is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime;
>
> (b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or
>
> (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.

In this case, the circuit court followed the statutory requirements and ruled that probation would undermine the seriousness of the crime. A finding of only one of the three listed factors is sufficient to deny probation to a defendant. Regardless, Beck now makes the assertion that in addition to the statutory considerations, the court should have given special consideration to Beck's age.

Beck primarily relies on *Thomas v. Commonwealth*, 605 S.W.3d 545 (Ky. 2020), *abrogated on other grounds by Abbott, Inc. v. Guirguis*, 626 S.W.3d 475, 483-84 (Ky. 2021), in support of his proposition that youthful offenders should be treated differently than adults in the statutory scheme of sentencing. However, the issue and holding of *Thomas* is that "the violent offender statute is inapplicable to youthful offenders for the purposes of the trial court's consideration of probation, even if the youthful offender has reached the age of majority at the time of sentencing." *Id*. at 547-48. Its reasoning was that there is a conflict between the violent offender rule (probation is unavailable for violent offenders) and the youthful offender statute that mandates consideration of probation.

However, Beck's argument, as correctly noted by the Commonwealth, has been previously addressed by the Kentucky Supreme Court in *Johnson v. Commonwealth*, 967 S.W.2d 12 (Ky. 1998). Therein, the Supreme Court held:

> Once a youthful offender attains the age of 18, however, there is no guarantee of probation or parole, regardless of the progress he may have made along the road to rehabilitation. Instead, the decision to probate or parole a

> youthful offender may only be made after careful consideration of several factors. Those factors are enumerated in KRS 533.010, which the trial court here properly applied after conducting the sentencing hearing required by KRS 640.030(2).

Id. at 15.

Notwithstanding the authority set out in *Johnson*, Beck makes a factual argument to this Court, recounting Beck's progress in treatment, his commitment to treatment goals, his improvement in attitude, and his maturity in thinking and reasoning. Presumably, the court erred by not referencing these items in the judgment. Beck also argues the circuit court failed to reference his "youth" in denying probation. Based on our review of the record below, there is absolutely no basis to believe the circuit court was not cognizant of the law and understood the court's duties under KRS 533.010(2) and KRS 640.030(2), including the consideration of Beck's treatment and "youth."

Finally, Beck also argues that his constitutional rights were violated by the lack of findings regarding his age. The law in Kentucky is well-settled that "[j]uveniles are not members of a suspect class and there is no constitutional right to be treated as a juvenile." *Caldwell v. Commonwealth*, 133 S.W.3d 445, 453 (Ky. 2004), *overruled on other grounds by Hall v. Commonwealth*, 551 S.W.3d 7, 15 (Ky. 2018).

In summation, the record below does not reflect that the circuit court abused its discretion in denying Beck probation. For this reason, we affirm the circuit court's March 21, 2025, Judgment of Conviction and Sentence.

ALL CONCUR.

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