RENDERED: NOVEMBER 13, 2026; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0862-MR

CHRISTOPHER F. WILSON — APPELLANT

v.

APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN LYNN WILSON, JUDGE
ACTION NO. 21-CR-00248

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, ECKERLE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Christopher F. Wilson appeals from the Judgment of Conviction and Sentence entered by the Henderson Circuit Court on July 2, 2025, sentencing Wilson to two years and one month of imprisonment, after voiding a diversion agreement signed on March 8, 2022.[1] Wilson alleges that his diversion

[1] Christopher F. Wilson's sentence was diverted for a period of three years.

period expired before the trial court entered the orders voiding his diversion and imposing sentence.[2] After careful review, we affirm.

BACKGROUND

In June of 2021, Christopher Wilson was indicted by the Henderson County Grand Jury for possession of a controlled substance in the first degree and criminal trespass in the third degree. In March of 2022, Wilson and the Commonwealth entered into a plea agreement wherein the Commonwealth would dismiss the trespassing charge and Wilson would agree to plead guilty to the possession charge. The Commonwealth recommended a sentence of two years and one month in prison. The Henderson Circuit Court accepted the plea, and in an order entered on March 16, 2022, granted pretrial diversion for a period of three years. One of the conditions of his diversion agreement stated: "Defendant shall not commit another offense during the period of the Pretrial Diversion[.]" Record at 31.

On December 11, 2024, the Henderson Circuit Court entered an order stating there was probable cause for the issuance of an arrest warrant due to Wilson violating one or more terms of his diversion. The court cited the affidavit of a

[2] The circuit court entered a separate order on July 2, 2025, voiding Wilson's diversion.

Probation and Parole officer that reported Wilson had been arrested for assault in the first degree on December 8, 2024 (Action No. 2025-CR-00074).[3]

The court continued the matter and on February 24, 2025, entered an order extending probation (diversion) on the motion of the Commonwealth until the pending revocation was resolved. On March 7, 2025, Wilson's counsel filed a motion to dismiss the diversion violation. Counsel argued that although the diversion period was originally scheduled to end on March 8, 2025, Wilson had completed a drug treatment program which entitled him to a mandatory 90-day credit toward his diversion period pursuant to Kentucky Revised Statutes (KRS) 439.268 and KRS 533.020(4). He argued that a credit of 90 days would have caused his diversion to expire on December 8, 2024, and therefore the court's issuance of the warrant and the Commonwealth's effort to void his diversion was untimely.

The circuit court entered an Order on March 27, 2025, holding that because Probation and Parole never gave the circuit court notice, no credit should be granted. Thereafter, following a revocation hearing on June 16, 2025, the court voided Wilson's diversion and imposed the sentence by judgment entered July 2, 2025. The court then granted Wilson probation for five years to run concurrently

[3] Wilson eventually plead guilty in Action No. 2025-CR-00074 and received a sentence of five years in prison that was probated for five years after he was shock probated in May of 2025.

with the sentence of probation in Action No. 2025-CR-00074. This appeal followed.

STANDARD OF REVIEW

The standard of review of a decision to void pretrial diversion is the same as a decision to revoke probation – abuse of discretion. *Milam v. Commonwealth*, 593 S.W.3d 68, 71 (Ky. App. 2020). In applying the abuse of discretion standard of review, we will not disturb a circuit court decision unless the court's decision was "'arbitrary, unreasonable, unfair, or unsupported by sound legal principles.'" *Id.* (quoting *Commonwealth v. Andrews*, 448 S.W.3d 773, 780 (Ky. 2014)). Here, Wilson does not dispute that the trial court had grounds to void his diversion; rather he contends that the court no longer had jurisdiction over his case because the diversion period had run before the arrest warrant was issued. To the extent the issue is one of jurisdiction to act, our review is *de novo*. *Petrey v. Commonwealth*, 725 S.W.3d 558, 560 (Ky. App. 2025). Likewise, any question of statutory interpretation is also reviewed *de novo*. *Spencer Cnty. Pres., Inc. v. Beacon Hill, LLC*, 214 S.W.3d 327, 329 (Ky. App. 2007).

ANALYSIS

As an initial matter, the Commonwealth argues, for the first time on appeal, that Wilson was required to name the Department of Corrections as a party and exhaust administrative remedies before requesting relief in this Court. The

Commonwealth erroneously argues that the exhaustion procedures of KRS 454.415 apply to this case. However, that statute refers to actions brought by inmates, and "inmate" as defined in the Chapter does not apply to persons on probation or diversion. KRS 454.400. The Commonwealth also refers us to a "Grievance Procedure" in the administrative regulations of the Department of Corrections on the subject of Probation Program Credit if an offender wishes to dispute the eligibility for credit. 501 Kentucky Administrative Regulations (KAR) 6:530, Corrections Policy and Procedure (CPP) 30.4(II)(H)1. We will address the question of exhaustion as it pertains to this case.

The exhaustion of remedies doctrine provides that proper judicial administration mandates judicial deference until after all viable remedies are exhausted before the agency vested with primary jurisdiction over the matter. *Board of Regents of Murray State Univ. v. Curris*, 620 S.W.2d 322, 323 (Ky. App. 1981). Honoring the exhaustion doctrine prevents premature court interference with the administrative process. *Popplewell's Alligator Dock No. 1, Inc. v. Revenue Cabinet*, 133 S.W.3d 456, 471 (Ky. 2004). As a general rule, exhaustion of administrative remedies is a jurisdictional prerequisite to seeking judicial relief. *Goodwin v. City of Louisville*, 215 S.W.2d 557, 559 (Ky. 1948). "The exhaustion doctrine's application does not remove a certain 'type of case' from a court's

subject matter jurisdiction," but simply defers the court's jurisdiction until a later time. *Jefferson Cnty. Bd. of Educ. v. Edwards*, 434 S.W.3d 472, 477 (Ky. 2014).

Wilson responds that he did not have to seek an administrative remedy since the Division of Probation and Parole acknowledged that he was entitled to the credit, and the controversy was caused by their failure to notify and thus obtain credit in the circuit court. An exception to the exhaustion doctrine is recognized when a party demonstrates that resorting to the administrative process would be an exercise in futility. *Popplewell's Alligator Dock No. 1*, 133 S.W.3d at 469, 472. In this case, the Division of Probation and Parole could not extend any remedy since it had already found him eligible and had given him a credit in its system. Thus, we concur that filing a grievance would have been futile and thus failure to seek an administrative remedy was no bar to this action under the circumstances set forth in this case.

As for the merits of the appeal, we are confronted with whether the Henderson Circuit Court could void Wilson's diversion, given that Wilson had earned credit for completing a drug program. Pretrial diversion is governed by Kentucky Rules of Criminal Procedure (RCr) 8.04 and KRS 533.250 – KRS 533.262. KRS 533.254(1) states that, "[t]he provisions of KRS 533.020 relating to the period of probation shall, in so far as possible, be applicable to the period of pretrial diversion except that supervision of the participants in the programs shall

be done by the Division of Probation and Parole." KRS 533.020,[4] in turn, provides, in pertinent part:

> (4)(a) The period of probation, probation with an alternative sentence, or conditional discharge shall be fixed by the court and at any time *may be extended or shortened by a duly entered court order or as modified by the Department of Corrections through the application of probation program credits under KRS 439.268*.
>
> . . . .
>
> (d) Upon completion of the probationary period, probation with an alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him or her, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.

(Emphasis added.) Thus, under KRS 533.020(4) Wilson was eligible to have his diversionary period shortened through the application of probation program credits under KRS 439.268. Wilson completed a drug treatment program which had been approved by the Department of Corrections, according to documentation he provided.[5] KRS 439.268(1)(b) provides, in pertinent part, that the individual "shall

[4] Kentucky Revised Statutes (KRS) 533.020 has since been amended by the General Assembly after the events of this case. *See* 2026 Kentucky Laws Ch. 136 (HB 762), Section 10.

[5] Wilson submitted his completion certificate from the Department of Corrections. In addition, an email filed in the court record received from Wilson's Probation and Parole officer stated that the credit had automatically been entered in the system. However, that email also stated there was confusion regarding which statute was applicable to Wilson's case and there was uncertainty as to the calculation. Record at 65.

receive credit on his or her sentence for . . . [s]uccessfully completing a drug treatment program . . . approved by the department, in the amount of not more than ninety (90) days for each program completed. . . ." The remainder of the statute pertinent to our analysis provides:

> (2) Probation program credits earned pursuant to subsection (1) of this section shall be applied to reduce the period of probation, probation with an alternative sentence, or conditional discharge ordered by the sentencing court.
>
> (3) No less than ninety (90) days before the projected date of final discharge, the department shall notify the sentencing court of probation program credits awarded pursuant to this section and that the period of supervision is reduced by the number of days of probation program credits earned by the supervised individual, and the impending discharge from supervision. If the sentencing court, upon receiving such notice does not take any action pursuant to KRS 533.020, the offender shall be discharged.
>
> (4) The department may promulgate administrative regulations for the awarding of probation program credits.

Here, while Wilson earned a credit of 90 days according to the Division of Probation and Parole, the division did not notify the sentencing court of that credit. Emails filed with the circuit court show that the Probation and Parole office elected not to send the report once they learned of the new violation: "On 12/8/2024, our office could have submitted the request for probation credit.

However, Mr. Wilson was incarcerated on this new felony arrest and a violation report was completed on 12/9/2024." Record at 67.

On appeal, Wilson emphasizes that the statute says "shall" in KRS 439.268(2) and (3). Wilson's Brief at 5. The word "shall" is generally regarded as mandatory, while "may" is permissive. KRS 446.010(26) and (39); *Storm v. Martin*, 540 S.W.3d 795, 800 (Ky. 2017); *Alexander v. S & M Motors, Inc.*, 28 S.W.3d 303, 305 (Ky. 2000). The circuit court noted in its March 27, 2025, order that probation program credits "shall be applied to reduce the period" and "the department shall notify the sentencing court of probation program credits awarded pursuant to this section [KRS 439.268(3)]." Record at 71. As a result, Wilson argues he should not be penalized for the Division of Probation and Parole's failure to carry out its duty to timely inform the court of the credit. More importantly, he argues that had the notice been given to the court, the diversion period would have ended on December 8, 2024, along with the court's jurisdiction to start the process to void it.

We observe that KRS 439.268 provides that the court, rather than probation officials, makes the final decision as to whether the credit is awarded. KRS 533.020 permits the courts to extend or shorten the period of probation or revoke it. Additionally, the Department of Corrections' administrative regulations,

pursuant to KRS 439.268(4), provides at CPP 30.4(II)(F)1. that "[t]he sentencing court judge will make the decision to allow or deny the probation program credits."

Thus, CPP 30.4 provides that while the credit is required to be reported, the court is not required to allow it. Wilson has not established that his diversion ended on December 8, 2024, because he cannot demonstrate that had his credit been reported earlier, it necessarily would have been applied by the court to shorten his sentence. More importantly, the credits were required to be reported not later than 90 days before the projected date of discharge. KRS 439.268(3). As noted, on day 90, the last day to report under the statute, Probation and Parole elected not to send the report upon learning of Wilson's arrest on that date. Probation and Parole did not violate the statute.

The Henderson Circuit Court was therefore justified in relying on the original expiration date when it acted promptly to issue a warrant and set a hearing since it had no information to the contrary. Furthermore, when the court belatedly learned of the probation credit, it held that "credit should not be granted." Record at 72. The awarding of credit is within the discretion of the court in accordance with the applicable regulations that were adopted pursuant to specific authority delegated by the legislature in KRS 439.268.

Wilson nevertheless argues that had the circuit court been notified timely about Wilson's completion of the drug treatment program, the court's

failure to allow credits earned under KRS 439.268 would be arbitrary, and thus constitute an abuse of discretion. Wilson's Brief at 5. We disagree. A sentencing court may have other legitimate reasons for denying a credit as the applicable regulations give the circuit court the discretion to deny the credit. Since the circuit court was not notified of Wilson's completion of the program, this argument is speculative at best and not properly before this Court for review.

Notwithstanding, as argued by the Commonwealth, we have serious doubt that KRS 439.268 was triggered and can be applied in this case. As noted by the circuit court, no program credit notice was ever sent to the circuit court as required by KRS 439.268. Without this notice, the statute is not triggered. *Petrey*, 725 S.W.3d at 563.

CONCLUSION

For the foregoing reasons, we affirm the Judgment of Conviction and Sentence entered July 2, 2025, by the Henderson Circuit Court, voiding Wilson's diversion and imposing the sentence in accordance with his plea agreement.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Aaron Reed Baker
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Russell Coleman
Attorney General of Kentucky

Christopher Henry
Assistant Solicitor General
Office of the Solicitor General
Frankfort, Kentucky