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Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0864-MR

WHITNEY WALLACE — APPELLANT

v.

APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN LYNN WILSON, JUDGE
ACTION NO. 16-CR-00419

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, L. JONES, AND KAREM, JUDGES.

CALDWELL, JUDGE: Whitney Wallace ("Wallace") appeals from an order of the Henderson Circuit Court revoking her probation, arguing the circuit court made insufficient findings and failed to consider graduated sanctions under KRS[1] 439.3106(1). We affirm.

[1] Kentucky Revised Statutes.

BACKGROUND

In January 2017, Wallace pleaded guilty to second-degree robbery, operating on a suspended or revoked license, and failure to maintain insurance. In exchange for her guilty plea, the Commonwealth had agreed to recommend a sentence of eight years and to voluntarily dismiss charges of second-degree Persistent Felony Offender ("PFO") and reckless driving. Following acceptance of Wallace's plea, the circuit court sentenced her to eight years for robbery and 90 days each on the other two counts, with the sentences running concurrently, for a total of eight years.

In May 2017, an agreed order for shock probation was entered in the case. Pursuant to the order granting shock probation, Wallace was subject to requirements including that she not commit another offense, avoid injurious or vicious habits, work faithfully at suitable employment, pay the costs of the proceedings, report to a probation officer as directed, permit her probation officer to visit her home or elsewhere, answer all reasonable inquiries by her probation officer, and promptly notify her probation officer of any change of address or employment.

Following her release on shock probation, Wallace failed to appear before the circuit court at a scheduled hearing regarding unpaid court costs. On October 12, 2017, the circuit court ordered the clerk to issue summons for Wallace

to appear on November 14, 2017, and show cause why she should not be held in contempt for failing to appear and to pay court costs. When Wallace failed to appear at this hearing as well, the court ordered that a bench warrant be issued for her. The order indicated that, upon her arrest, Wallace would be entitled to release on payment of bail in the amount of $195.00, the amount of the unpaid court cost.

Wallace was arrested on the warrant on February 23, 2018. The record reflects that Wallace posted bond in the amount of the unpaid court costs and was released from custody on the same date of her arrest. Upon her release, she signed a citation for contempt of court that ordered her to appear before the court on March 26, 2018.

Also, on February 23, 2018, another warrant for Wallace's arrest was issued from the circuit court. This occurred after an affidavit from an officer with Henderson County, Kentucky, Probation and Parole was filed in the record, alleging Wallace had violated the terms of her parole by absconding and for two new arrests. The affidavit alleged that Wallace had been arrested twice since her last scheduled report date to Indiana Probation and Parole, who were also supervising Wallace. The affidavit indicated Wallace had been arrested on August 31, 2017, then again on September 13, 2017, with the latter arrest being for unspecified "new felony charges." (Record on Appeal ("R.") at p. 69). The

affidavit reported that both arrests occurred in Vanderburgh County, Indiana, and concluded that Wallace was currently being held in the Vanderburgh County jail.

Additionally, the affidavit reported that, on September 15, 2017, the officer had made field contact with a person residing at the address Wallace had given to Probation and Parole as to where she was living in Mt. Vernon, Indiana. The affidavit reported that the person the officer spoke with told him she had not had any contact with Wallace from the time of her August 31, 2017 arrest.

The officer requested the court to revoke Wallace's probation and to issue a warrant for her arrest. On the same date the affidavit was filed, another order of arrest for Wallace from the circuit court issued, indicating that there was probable cause to believe that Wallace had violated at least one of the conditions of her probation. The order noted the report from Probation and Parole that Wallace had been arrested twice since her last report date and that this would be in violation of her probation.

On February 27, 2018, the officer with Henderson County Probation and Parole filed an amended affidavit. There, he indicated that:

> On 2/27/18 Wallace contacted Henderson County probation and parole and stated she had just been released from [Vanderburgh County Jail]. Wallace was directed to report to Henderson County [Probation and Parole] on 2/28/18. This officer contacted Judge Wilsons [sic] office and asked for the warrant to be Quashed due to Wallace making contact with this officer.

R. at 72.

On March 5, 2018, the circuit court quashed the arrest warrant. On March 26, 2018, Wallace appeared before the circuit court for the hearing on the contempt citation for previously failing to appear or pay court costs. After being appointed counsel, Wallace pleaded guilty to contempt. The circuit court ordered that the bond Wallace had posted for release be applied to the prior unpaid court costs, sentenced her to thirty days in jail, and conditionally discharged the jail sentence on the stipulation that Wallace commit no new offenses or any further violations of the law.

In January 2020, another officer with Henderson County Probation and Parole, Rebecca Beard, filed an affidavit in the record of Wallace's case. The affidavit indicated that Wallace had violated the conditions of probation when "[o]n Jan. 6, 2020, Whitney Wallace was sentenced to 1 year in Vanderburgh Co., Indiana in case 82D03-1910-F6-007341 to the charges of Resisting Law Enforcement and Possession of a Narcotic Drug. This is a new felony conviction." R. at p. 77. Officer Beard requested that Wallace's sentence of probation be revoked and that a warrant for her arrest issue.

Based upon Officer Beard's affidavit, the circuit court found that there was probable cause that Wallace had violated conditions of her probation and ordered that another arrest warrant issue on January 15, 2020. No subsequent

activity appears in the record until this arrest warrant (which had been issued in January 2020) was served on Wallace on May 8, 2025.

On May 19, 2025, Wallace appeared before the circuit court. The court appointed counsel asked for a short continuance of the revocation hearing. The Commonwealth moved to extend Wallace's probation pending resolution, without objection from defense counsel. The circuit court granted the requests of both parties and the matter was continued until June 9, 2025.

A probation revocation hearing took place before the circuit court as scheduled on June 9, 2025. At the hearing, the Commonwealth's sole witness was a Henderson County Probation and Parole Officer. On direct examination the officer affirmed that, on occasions, Probation and Parole officers would testify as to the contents of affidavits prepared by fellow officers regarding violations of probation. The officer was then requested to read from the January 2020 affidavit by Officer Beard.

After the officer had read the contents of Officer Beard's affidavit regarding Wallace's prison sentence in Indiana aloud, the Commonwealth asked his opinion as to whether a person convicted of new offenses while on probation could be adequately and safely monitored in the community. The officer responded in the negative and indicated that revocation was the recommendation of Probation and Parole.

On cross-examination, the officer conceded that he had no personal knowledge of the case outside of the contents of the affidavit. In response to follow-up inquiries from defense counsel, he admitted to being unaware whether anyone checked Justice Exchange or local hospitals in efforts to locate Wallace, verified the length of her Indiana sentence, or determined when the Indiana charges had been filed. He conceded to defense counsel that he had no knowledge as to whether the charges occurred subsequent to Wallace's shock probation in 2017, and agreed that if they had not, the conviction would not be a revocable offense.

The circuit judge examined the case record during the officer's testimony. The judge noted the February 2018 violation report in the record that indicated Wallace had been incarcerated in Vanderburgh County jail and that she had a new felony arrest there in September 2017. Additionally, the judge noted that the warrant in the case had been outstanding since 2020, and she asked the probation officer whether Wallace had made contact with Probation and Parole since that time. The officer answered that he was not aware of her having done so but that he did not know.

Wallace did not testify during the hearing and presented no evidence.

After the hearing of proof, the circuit court revoked Wallace's probation and ordered that she serve the outstanding remainder of her original

sentence of eight years in prison. The circuit judge offered the following commentary in support of the decision:

> The court's going to find that she's violated her probation. She's absconded from supervision and had new arrests and new convictions of a felony nature and [the court] finds no less restrictive alternative short of revocation. She cannot be properly supervised in the community. If she absconds and hides her whereabouts then she is a risk to the community. Because of her continued criminal conduct, use of illegal drugs unabated with treatment, and [the finding of] no less restrictive alternatives, [the court] will revoke and require that she serve the sentence previously imposed.

Video Record ("VR") 6/9/2025 at 8:54:00.

Following the hearing, an Order Regarding Motion To Revoke Probation/Void Diversion ("Revocation Order"), R. at p. 87, issued from the circuit court. The Revocation Order consisted of a preprinted form with Wallace's name and case number handwritten in provided blank lines, and handmarked selections on a preprinted checklist.

The selections on the checklist in the Revocation Order indicate findings that Wallace had "violated . . . her Order of Probation . . . by [f]ailing to report to his/her probation officer as ordered" as well as "committing a new offense." Thereafter, a selection indicates a finding that Wallace's "failure to abide by the conditions of supervision constitutes a significant risk to prior victims of the supervised individual or to the community at large and . . . that [Wallace] cannot

be appropriately managed within the community." Revocation Order, p. 1. A final selection from a second checklist on the bottom half of the form indicated that the circuit court ordered that Wallace's probation be revoked and that she be recommitted to the Department of Corrections to serve the balance of her original sentence.

This direct appeal follows.

ANALYSIS

KRS 439.3106(1) states that probationers 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.

Construing the statute, our Supreme Court has held that KRS 439.3106(1) requires a circuit court to make two findings before revoking probation: 1) "that the probationer's failure to abide by a condition of supervision constitutes a significant risk to prior victims or the community" and 2) "that the probationer cannot be managed in the community[.]" *Commonwealth v. Andrews*,

448 S.W.3d 773, 781 (Ky. 2014). The circuit court can make these findings either orally or in writing, but they must be supported by evidence in the record. *See generally Commonwealth v. Gilmore*, 587 S.W.3d 627, 631 (Ky. 2019).

In her Appellant brief, Wallace asserts that she presents this Court with a single issue on appeal; she alleges the circuit court abused its discretion in revoking her probation. She divides her argument into two subsections where she alleges the circuit court abused its discretion in two respects. In the first subsection, she asserts that "[t]he trial court failed to comply with KRS 439.3106(1)(a)." Appellant brief, p. 10. Here, her points of argument include an assertion that the findings of the circuit court were insufficient to satisfy the mandate of KRS 439.3106(1)(a). However, Wallace also alleges at several points in this subsection that the evidence of record was insufficient to support revocation.

In the second subsection of her argument, Wallace alleges that "[t]he trial court failed to consider alternative graduated sanctions less than revocation." Appellant brief, p. 13. In a preservation statement which appropriately appears at the opening of the argument section of her brief,[2] Wallace asserts that the issue was preserved and generally cites to the revocation hearing and the resulting order.

[2] *See* Kentucky Rules of Appellate Procedure ("RAP") 32(A)(4) (requiring Appellant brief to contain "at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner").

The Commonwealth argues the circuit court did not abuse its discretion. The Commonwealth characterizes Wallace's subarguments as alleging failure to consider graduated sanctions and "not making sufficient findings" and contends that either lacks merit. Appellee brief, p. 3. However, the Commonwealth also contends that neither of these arguments were appropriately preserved for our review.

Standard of Appellate Review

Typically, when reviewing a circuit court's probation revocation decision, it is well established that the standard of review is that of abuse of discretion. *Andrews*, 448 S.W.3d at 780. "And for a trial court's decision to be an abuse of discretion, we must find that the decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky. 2007) (internal quotation marks and citation omitted).

Here, however, the parties dispute the matter of preservation. In Wallace's Reply brief, she requests palpable-error review in the event this Court concludes the issue was not properly preserved, in conformity with RCr[3] 10.26. Preservation is appropriately addressed at the outset because "the fact and manner of preservation generally determines the applicable standard of review." *Gasaway v. Commonwealth*, 671 S.W.3d 298, 311 (Ky. 2023). While Wallace includes a

[3] Kentucky Rules of Criminal Procedure.

preservation statement in her brief, it is not exhaustive in detail. Moreover, she provides little substantive response to the Commonwealth's objection in her Reply brief.

On the other hand, while the Commonwealth cites relevant caselaw and case-specific facts in support of its assertion that Wallace failed to preserve her argument regarding graduated sanctions,[4] the authority it cites in support of the contention she failed to preserve its argument regarding insufficient findings is not so well-formed.[5] Moreover, to the extent that Wallace argues that there was insufficient evidence to support revocation, the Commonwealth does not clearly challenge preservation. However, in the transcript of the revocation hearing the Commonwealth includes elsewhere in its Appellee brief, defense counsel plainly challenged the sufficiency of the Commonwealth's evidence during cross-examination of the probation officer and exchanges with the circuit court. Arguably, this transcript confirms that, in conformity with RCr 9.22, Wallace

[4] The Commonwealth cites to *Kaletch v. Commonwealth*, 396 S.W.3d 324, 329 (Ky. App. 2013), and contends that Wallace, as with Kaletch, failed to specifically request graduated sanctions so that the issue was unpreserved.

[5] The Commonwealth quotes *Cash v. Commonwealth*, to argue generally that "RCr 9.22 requires a party to make 'known to the court the action he desires the court to take or his objection to the action of the court.'" Appellee brief, p. 5 (quoting 892 S.W.2d 292, 295 (Ky. 1995)). In *Cash*, our Supreme Court determined that, where no objection to an allegedly incorrect jury instruction was made before submission to the jury, the alleged error of failure to instruct the jury correctly was unpreserved. 892 S.W.2d at 295. Other authority cited by the Commonwealth on the matter of preservation is no more directly on point factually.

presented the circuit court with an objection to the sufficiency of the Commonwealth's evidence prior and made known to the court she objected to revocation based upon that evidence. Based upon our own review of transcript and video recording of the revocation hearing, issues about sufficiency of evidence appear to have been preserved by defense counsel.

Nonetheless, even if we were to leniently assume *arguendo* the issue was adequately preserved and apply an abuse of discretion standard, as detailed below, we would conclude no reversible error occurred. And we certainly do not discern any indication that palpable error occurred when the circuit court revoked Wallace's probation, even if we utilized that standard to analyze one or more of Wallace's subarguments. Consequently, as we are confident the same result would be reached regardless of the standard employed, we conclude it is unnecessary to resolve the parties' dispute regarding preservation. *See Walker v. Commonwealth*, 588 S.W.3d 453, 458 (Ky. App. 2019).

No Reversible Error in the Circuit Court's Finding That Wallace's Failure to Abide by the Conditions of Probation Constituted a Significant Risk to the Public and That Wallace Cannot Be Appropriately Managed in the Community.

In the argument section of her initial brief, Wallace first alleges that that the circuit court failed to comply with KRS 439.3106(1)(a). In regard to the statutory findings made by the circuit court, Wallace argues that, even if one reads the Revocation Order in conjunction with the oral findings of fact, the circuit court

identified no nexus between the oral findings and written conclusions. She specifically alleges that the circuit court failed to state how the violations it found made Wallace a risk to the community. Wallace maintains that the statute and due process requirements mandate that the circuit court provide an explanation of its reasoning in this regard, and that an order of revocation lacking such details must be vacated and remanded.

For the Revocation Order, the circuit court used a preprinted form with a checklist to select findings. The preprinted findings the court selected indicate determinations that Wallace "Violated . . . her Order of Probation . . . by Failing to report to . . . her probation officer as ordered" and "Committing a new offense." Below that, another selection indicates a determination "(1) that the Defendant's failure to abide by the conditions of supervision constitutes a significant risk to prior victims of the supervised individual or to the community at large and (2) that the Defendant cannot be appropriately managed within the community."

Wallace complains that the Revocation Order consisted only of the preprinted form without even the addition of case-specific facts. She contends that written orders are the preferred practice. Nevertheless, she does not directly allege that this, in itself, was erroneous. While Wallace acknowledges oral statements of the judge as findings of fact of the circuit court which supplement the Revocation

Order, she argues that, even with the Order read in conjunction with the oral findings, the circuit court failed to identify the factual support for its conclusory statements in the order.

In *Walker*, this Court determined that a written revocation order consisting only of conclusory statements on preprinted forms, even combined with oral statements made by the circuit judge, contained insufficient statutory findings for revoking a defendant's probation. 588 S.W.3d at 459. Similar to the present case, the circuit judge commented upon her reasoning for the decision to revoke at the conclusion of a revocation hearing. *Id*. at 458.

We noted in *Walker* that, prior to the passage of KRS 439.3106, a decision to revoke probation was within the trial court's discretion and not reversed unless that discretion had been abused. *Id*. at 456. Furthermore, great deference was paid to a trial court's revocation decision, and an abuse of discretion could be established only by showing the record held no evidence to support even a single violation. *Id*. The passage of KRS 439.3106(1), however, modified these standards so that circuit courts are now required to "find that the probationer's failure to abide by a condition of supervision constitutes a significant risk to prior victims or the community, and that the probationer cannot be managed in the community before probation may be revoked." *Id*. at 457 (quoting *Andrews*, 448 S.W.3d at 781). Nonetheless, even though the legislative passage of KRS

439.3106(1) "reflect[ed] a new emphasis in imposing and managing probation, it does not upend the trial court's discretion in matters of probation revocation, provided that discretion is exercised consistent with statutory criteria." *Walker*, 588 S.W.3d at 458 (quoting *Andrews*, 448 S.W.3d at 780).

However, in the oral comments made by the circuit court in *Walker*, the judge:

> did not make any specific oral findings related to the mandatory criteria in KRS 439.3106. Rather, the court focused on Walker's dishonesty in relation to whether he had cancer and touched on his past violations. The only mention of the statutory criteria can be found in the written orders revoking Walker's probation. These were preprinted forms that the circuit court completed in writing[.]

Id. at 458.

Given the requirements of KRS 439.3106(1), as clarified by our Supreme Court in *Andrews*, we concluded that the preprinted form order revoking probation and oral findings of the circuit court were insufficient to meet the mandatory statutory findings necessary to revoke a defendant's probation. *Id*. at 459. We concluded that either an abuse of discretion or palpable error standard of review required the circuit court's decisions to be vacated with the case remanded for full consideration of the statutory criteria and entry of appropriate findings. *Id*.

Wallace argues similarly to the Appellant in *Walker*. "Walker [did] not dispute the circuit court's finding that he violated the terms of his probation

when he was terminated from the Drug Court program." 588 S.W.3d at 458. As the Commonwealth points out, Wallace does not expressly deny that she violated the terms of her probation by being convicted of a subsequent felony, absconding, and/or using drugs.

Walker "dispute[d] that the circuit court made the necessary findings pursuant to the statute that he constituted a significant risk to prior victims or the community at large and could not be appropriately managed in the community, or that the Commonwealth presented any evidence to establish these criteria." 588 S.W.3d at 458. Wallace disputes much the same.

However, the oral findings of the circuit court during the revocation hearing in this case are distinct in nature from those in *Walker*. In *Walker*, comments by the circuit judge focused upon testimony by Walker during his revocation hearing where he denied telling anyone at a drug treatment program that he had cancer. 588 S.W.3d at 455. The probation violation at issue was Walker being terminated from the program for falsely claiming he had been diagnosed with cancer and refusing access to his medical records to confirm this. *Id*. In oral findings, the circuit court noted that medical records appeared in conflict with Walker's testimony to the court about whether his doctor had advised him he "might" have cancer and the circuit judge "could not deal with Walker's dishonesty[.]" *Id*. at 456.

In this case, the circuit judge commented:

> The court's going to find that she's violated her probation. She's absconded from supervision and had new arrests and new convictions of a felony nature and [the court] finds no less restrictive alternative short of revocation. She cannot be properly supervised in the community. If she absconds and hides her whereabouts then she is a risk to the community. Because of her continued criminal conduct, use of illegal drugs unabated with treatment, and [the finding of] no less restrictive alternatives, [the court] will revoke and require that she serve the sentence previously imposed.

VR 6/9/2025 at 8:54:00.

In contrast with *Walker*, it certainly cannot be said here "that the circuit court did not make any specific oral findings *related* to the mandatory criteria in KRS 439.3106." *Walker*, 588 S.W.3d at 458 (emphasis added). The oral findings here express the judge's conclusions that Wallace's "violation[s] constituted a significant risk to the . . . community at large, and that [s]he could not be appropriately managed in the community, pursuant to KRS 439.3106(1)" that were absent in *Walker*. *Id*. at 459. While the oral findings perhaps do not provide verbatim recitation of KRS 439.3106 criteria, they give every indication that the circuit court arrived at its decision to revoke in a manner consistent with the statute.

Still, Wallace argues these findings amounted to no more than conclusory reasons listed by the judge. She argues the circuit court failed to

provide any explanation as to how her violations amounted to a significant risk to the community. Wallace contends that due process required the circuit court to explicitly identify the evidence it relied on, as well as its reasoning for its conclusion, so she contends that the conclusory reasons given by the circuit court were insufficient. In support, she relies upon *Commonwealth v. Alleman*, 306 S.W.3d 484, 487 (Ky. 2010). Accordingly, she contends, the findings of the circuit court do not provide an adequate basis for appellate review, and we must vacate the order. *See Alleman*, 306 S.W.3d at 487 (internal quotation marks and citations omitted) ("The basis for requiring a written statement of facts is to ensure accurate fact finding and to provide an adequate basis for review to determine if the decision rests on permissible grounds supported by the evidence.").

This Court recently examined a similar argument in *Nantz v. Commonwealth*, 728 S.W.3d 804, 811 (Ky. App. 2026). There, Nantz also argued the circuit court must provide a reviewable analysis of the requisite statutory findings instead of general conclusory reasons. *Id*. As support for his argument, Nantz cited to *Alleman*, as Wallace does now. However, as this Court pointed out to Nantz, "*Alleman* not only preceded the General Assembly's passage of KRS 439.3106, but also supports affirmance of the Orders *sub judice*." *Nantz*, 728 S.W.3d at 811. The explanation in *Nantz* is no less applicable to the argument

propounded by Wallace and the precedent she relies upon also supports affirmance of the Revocation Order. As we stated in *Nantz*:

> In *Alleman*, our Supreme Court considered whether the Trial Court's oral ruling revoking probation passed constitutional muster. At the time, the criteria enumerated in KRS 439.3106 was not at play. Regardless, the Kentucky Supreme Court held that "a recorded oral recitation by the trial court of findings and reasons for revocation, if otherwise sufficient, satisfies applicable due process requirements." 306 S.W.3d at 486. The Supreme Court determined that the Trial Court's reasons for revocation, which were purely based on the probated individual's failure to report upon release from custody, were sufficient to support the Trial Court's oral findings. *Id*. at 485. Therefore, we reject Nantz's argument that *Alleman* mandates reversal.
>
> Furthermore, since the General Assembly's enactment of KRS 439.3106 in 2011, the Kentucky Supreme Court has expressly dispensed with the notion that a Trial Court must convey its reasoning in support of the statutorily required findings under subsection (1)(a). *Andrews*, 448 S.W.3d at 777. Indeed, the Supreme Court explained that the statutorily mandated findings must be stated in the revocation order, but the grounds supporting those findings may only lead to reversal if those findings lack evidentiary support. *Id*. at 779.

Nantz, 728 S.W.3d at 811-12.

It is by now well-established that, "[a] trial court is not required to provide explanations for [its] KRS 439.3106 findings; instead, it must only make the findings, which must be supported by the evidence of record." *Kendrick v. Commonwealth*, 664 S.W.3d 731, 734 (Ky. App. 2023) (quoting *New v.*

Commonwealth, 598 S.W.3d 88, 90 (Ky. App. 2019)). To the extent Wallace directly attacks the sufficiency of the factual findings of the circuit court, she alleges the circuit court failed to comply with KRS 439.3106 by providing no explanation as to the nexus between the findings and the legal conclusion that Wallace was a risk to the community. However, in order to comply with KRS 439.3106, the circuit court was "only required to make the statutory findings, not explain them." *Kendrick*, 664 S.W.3d at 734. Accordingly, no abuse of discretion or palpable error occurred. The court made the statutorily requested findings. Next, we address whether these findings were supported by the evidence.

The Record Contains Sufficient Evidence in Support of the Findings of the Circuit Court.

In her argument that the circuit court failed to comply with KRS 439.3106(1)(a), Wallace makes several points where she alleges that the findings of the circuit court were not supported by sufficient evidence. She alleges the finding of absconding was unfounded because the evidence she had been incarcerated was provided through an affidavit by an absent probation officer. She points out the probation officer who did testify could not answer whether Wallace "had been incarcerated or in the hospital." Appellant brief, p. 11.

The Commonwealth emphasizes the timeline of the case prior to the Revocation Order. The Commonwealth points out that the record indicates that Wallace was placed on probation in May 2017 and was arrested for a subsequent

offense only three months later, in August 2017. The Commonwealth points out that the record indicates Wallace was arrested again in the following month, September 2017, this time on new felony charges. The January 2020 revocation affidavit reported that Wallace had received a one-year sentence in Indiana for resisting law enforcement and possession of a narcotic drug, a new felony conviction. The probation revocation warrant that the circuit court issued as a result of the January 2020 affidavit was not served on Wallace until May 8, 2025, more than five years later. The Commonwealth acknowledges the officer's concessions on cross-examination about lack of personal knowledge and unverified details. However, the Commonwealth also notes that Wallace presented no proof and did not deny the arrests or conviction.

There is sufficient evidence on the record that Wallace failed to comply with the terms of her probation. It is undisputed that she missed multiple court appearances in 2017, and that she was subsequently arrested on multiple occasions for subsequent offenses. An affidavit stated that she had absconded in 2018. Also, there appears to have been no dispute that, on January 6, 2020, she was sentenced to one year in prison in Vanderburgh County, Indiana for resisting law enforcement and possession of a narcotic. Nevertheless, the resulting warrant for probation revocation issued on the same day was unserved for more than five years, with no evidence from Wallace that she reported in the interim.

Wallace points to cross-examination of the officer from Probation and Parole, who conceded he had no personal knowledge or information beyond the affidavit as to whether Wallace was in custody or in the hospital at a particular point in time. However, Wallace does not appear to have offered any substantiation that she had been hospitalized for some time during the period her arrest warrant was outstanding. Rather, she offered no evidence or explanation as to her whereabouts for the entire period between January 2020 and May 2025 during the revocation hearing and does not appear to have done so elsewhere.

KRS 439.3106 simply does not require the circuit court to provide greatly detailed findings or explanations for its findings. *New*, 598 S.W.3d at 90. It must only make the findings, which must be "supported by the evidence of record." *McClure v. Commonwealth*, 457 S.W.3d 728, 733 (Ky. App. 2015). "There must be proof in the record established by a preponderance of the evidence that a defendant violated the terms of his release and the statutory criteria for revocation has been met." *Gilmore*, 587 S.W.3d at 630 (quoting *Helms v. Commonwealth*, 475 S.W.3d 637, 645 (Ky. App. 2015)).

Even terse KRS 439.3106 findings, which appear to simply regurgitate statutory language, do not call for reversal of revocation so long as the required statutory findings are made and are supported by the record. *See Kendrick*, 664 S.W.3d at 735; *McClure*, 457 S.W.3d at 733-34; *Gilmore*, 587

S.W.3d at 630-31; *New*, 598 S.W.3d at 90. Despite any appearance that the circuit court's use of a preprinted form to select findings of KRS 439.3106(1) requirements simply regurgitated this statutory subsection's language, the trial court identified the probation violations with specificity during its oral findings at the conclusion of the revocation hearing.

As noted above, the oral findings demonstrate the circuit judge arrived at the decision to revoke consistent with KRS 439.3106(1). Contrary to Wallace's allegation the circuit court abused its discretion, the decision to revoke was supported by sound legal principles. *See Blankenship v. Commonwealth*, 494 S.W.3d 506, 508 (Ky. App. 2015) (internal quotation marks and citations omitted) ("To amount to an abuse of discretion, the trial court's decision must be arbitrary, unreasonable, unfair, or unsupported by sound legal principles."). Moreover, the evidence supports the circuit court's findings that Wallace posed a significant risk to the public and could not be appropriately managed in the community. *See Kendrick*, 664 S.W.3d at 734-35. There was nothing arbitrary or unreasonable about the decision to revoke. Wallace has not established any abuse of discretion as to the circuit court's compliance with KRS 439.3106(1)(a).

Having addressed whether the circuit court properly found that Wallace posed a significant risk to the public and could not be appropriately

managed in the community, we next review her argument concerning graduated sanctions.

No Reversible Error Occurred When Wallace Was Not Given Alternative Graduated Sanctions Less Than Revocation.

Wallace argues that revocation was the sole sanction considered by the circuit court. She contends that community service, electronic monitoring, and/or jail time were available alternatives that the probation officer should have ordered before seeking revocation. Additionally, Wallace argues that her time spent in custody should have been counted as a graduated sanction. Finally, she argues that the circuit court could have ordered substance-abuse treatment.

The Commonwealth argues that the circuit court clearly considered and rejected graduated sanctions during the revocation hearing. The Commonwealth points to two occasions during the oral findings of the circuit judge where she said she found that "no less restrictive alternative" to revocation was appropriate for Wallace. VR 6/9/25, 8:54:00. Additionally, the Commonwealth argues that the circuit court did not need to provide Wallace with any lesser sanction before revocation.

KRS 439.3106(1)(b) authorizes a circuit court to impose "[s]anctions 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." "[T]he General Assembly intended the task of considering and making findings regarding the two factors of KRS 439.3106(1) to serve as the analytical precursor to a trial court's ultimate decision: whether revocation or a lesser sanction is appropriate." *McClure*, 457 S.W.3d at 732. By requiring the circuit court to make such a determination, "the legislature furthers the objectives of the graduated sanctions schema to ensure that probationers are not being incarcerated for minor probation violations." *Andrews*, 448 S.W.3d at 779.

It is well-established, nonetheless, that a circuit court is not required to utilize a lesser sanction before a probationer is subject to revocation. *See McClure*, 457 S.W.3d at 732 (emphasis added) (While "KRS 439.3106 permits, but does not require, a trial court to employ lesser sanctions[,]" there is "[n]othing in the statute or in the Supreme Court's interpretation of it" which "*requires* the trial court to impose lesser sanctions prior to revoking probation.").

Upon review of the video recording of the revocation hearing, we agree with the Commonwealth that the circuit court indicated that graduated sanctions available pursuant to KRS 439.3106(1)(b) had been considered when the circuit judge twice said she found "no less restrictive alternative" to revocation was appropriate under the facts of Wallace's case. Moreover, the video record demonstrates that the circuit court actively reviewed the written case record during

the revocation hearing and noted a history of violations by Wallace previously met with lesser sanctions. As this Court has recognized, "[a] defendant who will not cooperate with the conditions of her supervision may indeed constitute a significant risk to the community at large and be unmanageable in the community." *Compise v. Commonwealth*, 597 S.W.3d 175, 182 (Ky. App. 2020).

And review of the record by this Court confirms that Wallace was afforded graduated sanctions by the circuit court and her probation officers on multiple occasions before revocation occurred. The circuit court allowed her to remain on probation following her arrest and guilty plea to contempt as a result of failing to appear at consecutive hearings in 2017. When the 2018 absconding affidavit was amended, the circuit court agreed to her probation officer's request to remand revocation proceedings.

Despite Wallace's argument that the probation officer should have sanctioned her prior to seeking revocation, she cites to no authority in support of this argument. Moreover, her argument appears to conflict with 501 KAR[6] 6:250 § 2(2)(a), which contains a list of violations for which an officer may not impose graduated sanctions. Instead, such listed violations must be submitted to the circuit court. These include "[a]bsconding supervision"; "[n]ew felony conviction"; and "[d]emonstrated pattern of failure to comply with conditions of supervision[.]" As

[6] Kentucky Administrative Regulations.

the January 2020 affidavit submitted by Probation and Parole indicated that Wallace had just been convicted of a new felony, her probation officer could not have elected to impose graduated sanctions.

Wallace points to no indication on the record that she cooperated with any basic conditions of her supervision, or made her whereabouts known to the circuit court or to her probation officers, over a period of several years. Furthermore, the record indicates that Wallace was previously given graduated sanctions and nonetheless continued to violate the terms of her probation. Substantial evidence on the record indicates that Wallace was given multiple opportunities to comply with the terms of her probation, but she repeatedly failed to do so.

Wallace has not shown that the circuit court's decision to revoke her probation, rather than electing to give her graduated sanctions under KRS 439.3106(1)(b), was an abuse of discretion. Given the record and timeline of the underlying case, we discern nothing about the decision which is arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *See Blankenship*, 494 S.W.3d at 508.

In sum, the circuit court made all required KRS 439.3106(1) findings before revoking Wallace's probation, and those findings are supported by the evidence in the record.

Further arguments in the parties' briefs which are not discussed herein have been determined to lack merit or relevancy to our resolution of this appeal.

CONCLUSION

For the reasons stated herein, **WE AFFIRM**.

ALL CONCUR.

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