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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1079-MR

JACKIE BOWLING — APPELLANT

v.

APPEAL FROM JACKSON CIRCUIT COURT
HONORABLE OSCAR G. HOUSE, JUDGE
ACTION NO. 22-CR-00048

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; EASTON AND ECKERLE, JUDGES.

THOMPSON, CHIEF JUDGE: Jackie Bowling (Appellant) appeals from an order of the Jackson Circuit Court revoking his probation. Appellant argues that the circuit court abused its discretion in revoking his probation without explaining why he could not be appropriately managed in the community. He also argues the court erred by not explaining why he would be a significant risk to the community and in failing to make a finding that Appellant was able to pay restitution. He requests an

opinion reversing the order on appeal and remanding the matter for findings of fact and consideration of alternative sanctions. After careful review, we find no error and affirm the order on appeal.

FACTS AND PROCEDURAL HISTORY

On June 6, 2023, Appellant entered a guilty plea in Jackson Circuit Court to theft by failure to make required disposition over $1,000.[1] Pursuant to a plea agreement, Appellant was sentenced to five years in prison, to be probated for five years. As a condition of his probation, Appellant was required to pay $12,800 in restitution at the rate of $250 per month.

In October 2023, the Commonwealth filed two motions to revoke Appellant's probation. In support of the motions, the Commonwealth alleged that Appellant was not making the required restitution.

On December 27, 2023, and before the prior motions were ruled upon, Probation and Parole filed a violation of supervision report that Appellant was $545.24 behind on his restitution payments. The report further alleged that Appellant had been charged with assault in the fourth degree.[2]

The pending matters were continued several times over the following months. On November 21, 2024, Probation and Parole filed a second violation of

[1] Kentucky Revised Statutes (KRS) 514.070.

[2] KRS 508.030.

supervision report, alleging that Appellant had been charged with assault in the third degree, menacing, terroristic threatening in the third degree, criminal mischief in the second degree, and resisting arrest.[3] The pending matters were again continued to March 4, 2025.

On March 4, 2025, Probation and Parole filed a third violation of supervision report. The report stated that two days earlier, Kentucky State Trooper Trey Lovins and Clay County Sheriff's Deputy Wes Brumley came to the residence of Appellant's probation officer Justin Riggs. According to the report, Trooper Lovins told Riggs that Appellant texted Lovins and alleged that Riggs had child pornography on his phone.

Riggs allowed Trooper Lovins to search his phone for child pornography. When Lovins found no child pornography on Riggs' phone, he returned it to Riggs. Trooper Lovins suggested that Riggs contact the County Attorney to report that Appellant had filed a false report. Riggs subsequently reported the matter to the County Attorney and to the circuit court. On March 11, 2025, Probation and Parole filed another report stating that Appellant had not paid any restitution since September of 2024.

And finally, a hearing was conducted on April 1, 2025, after which the Jackson Circuit Court entered an order revoking Appellant's probation. In

[3] KRS 508.025; KRS 508.050; KRS 508.080; KRS 512.030; and KRS 520.090.

support of the order, the court found that new criminal charges had been filed against Appellant, and that Appellant failed to pay restitution as required by the terms of his probation. Appellant was remanded to custody to serve the remainder of his five-year sentence. This appeal followed.[4]

ARGUMENTS AND ANALYSIS

Appellant argues that the circuit court abused its discretion in revoking his probation without making sufficient findings to support the ruling. He directs our attention to KRS 439.3106, which provides that supervised individuals may be subject to revocation for failure to comply with the conditions of supervision where the failure constitutes a significant risk to the community and probated defendant cannot be appropriately managed in the community. Appellant contends that the circuit court erred in failing to make specific findings on each statutory element, *i.e.*, why he could not be appropriately managed in the community. In addition, he argues the court erred when it did not state why he would be a significant risk to the community and in failing to make a finding that Appellant was able to pay restitution. Based on the lack of proper findings, Appellant argues that the circuit court's ruling revoking his probation constitutes an abuse of discretion. He requests an opinion reversing the order on appeal.

[4] Appellant did not appeal in a timely manner. Appointed counsel subsequently moved for an order permitting a belated appeal, which was granted on April 15, 2026.

Though Appellant believes the matter is properly preserved by way of counsel's discussions with the circuit court, he acknowledges that he did not object to the entry of the order on appeal, and seeks, if necessary, review for palpable error.[5]

KRS 439.3106 states:

> (1) Supervised individuals 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.

We review a probation revocation claim for abuse of discretion. *Commonwealth v. Gilmore*, 587 S.W.3d 627, 629 (Ky. 2019).

The sole question for our consideration is whether the Jackson Circuit Court erred in failing to make sufficient factual findings to support its conclusion that Appellant could not be appropriately managed in the community, was a significant risk to the community, and was able to pay restitution. In *Kendrick v.*

[5] We will characterize these issues as properly preserved.

Commonwealth, 664 S.W.3d 731 (Ky. App. 2023), a panel of this Court addressed whether specific findings were required to support the conclusion that a probationer violated the terms of his probation. The panel determined that "a court is only required to make the statutory findings, not explain them." *Kendrick*, 664 S.W.3d at 734 (citation omitted). Citing *New v. Commonwealth*, 598 S.W.3d 88, 90 (Ky. App. 2019), the panel concluded that the statutory findings alone were sufficient as long as they were supported by evidence of record. *Id.* That panel clarified its prior ruling in *Helms v. Commonwealth*, 475 S.W.3d 637, 645 (Ky. App. 2015), by noting that while a perfunctory recitation of the statutory language alone was insufficient, statutory findings were sufficient if supported by evidence of record. *Kendrick*, 664 S.W.3d at 735.

Here, the record contains evidence sufficient to support the Jackson Circuit Court's statutory findings. Evidence was adduced that Appellant was charged with multiple offenses while on probation, including assault, resisting arrest, menacing, terroristic threatening, and a felony charge for assaulting a police officer. In addition, Probation Officer Riggs provided information that Appellant had wrongly accused him of having child pornography on his phone, which allegedly constituted harassing communication to his probation officer in violation of the terms of his probation. Appellant did not dispute that new charges violate the terms of his probation.

Further, and as noted by the Commonwealth, the circuit court is not required to wait until the probationer commits a heinous act before he can be found to be a risk to the community. *McClure v. Commonwealth*, 457 S.W.3d 728, 733 (Ky. App. 2015). We conclude that the circuit court's statutory finding that Appellant poses a significant risk and could not be appropriately managed in the community is amply supported by the record.

Appellant goes on to argue that it is "troubling" that the circuit court cited his failure to pay restitution as a basis for revocation. He asserts that the circuit court's written orders did not specify what evidence the court relied upon, but simply stated that Appellant's probation was revoked for the violations claimed by the Commonwealth, including failure to pay restitution. He states that it is not clear how much the circuit court relied on his failure to pay as a factor for revocation. He asserts that if the failure to pay restitution constituted a basis for the revocation, the circuit court improperly failed to find that he made bona fide attempts to pay but was unable to do so, and to consider whether alternatives to imprisonment might suffice to serve interests in punishment and deterrence per *Commonwealth v. Marshall*, 345 S.W.3d 822, 828 (Ky. 2011).

The circuit court's finding that Appellant poses a significant risk to the community based on the multiple charges against him while on probation, taken alone, forms a proper basis for revoking Appellant's probation per KRS

439.3106. To the degree that the circuit court relied on Appellant's failure to make restitution as a basis for the revocation, we find no error. Appellant readily acknowledged having not made restitution.

Appellant correctly notes that the circuit court did not make specific findings as to whether he made sufficient bona fide attempts to make payments but has been unable to do so through no fault of his own and, if so, whether alternatives to imprisonment might suffice to serve interests in punishment and deterrence. *Marshall*, however, requires only that the court "consider" these factors, not that it make specific findings on them. *Marshall*, 345 S.W.3d at 828.

Further, once the Commonwealth demonstrated by a preponderance of the evidence that Appellant failed to make restitution as required by the terms of his probation, the burden shifted to Appellant to prove "that he made bona fide efforts to comply with payment conditions but was unable to do so through no fault of his own." *McKenzie v. Commonwealth*, 735 S.W.3d 543, 548 (Ky. App. 2026) (citation omitted). Appellant has not met this burden and we find no error.

CONCLUSION

The record supports the Jackson Circuit Court's findings that Appellant violated the conditions of his probation, and that such violation constitutes a significant risk to the community and cannot be appropriately managed in the community. KRS 439.3106(1)(a). After the Commonwealth

demonstrated by a preponderance of the evidence that Appellant failed to make restitution as required by the terms of his probation, he did not meet the burden of proving that he made bona fide efforts to comply with payment conditions but was unable to do so through no fault of his own. *McKenzie*, 735 S.W.3d at 548. Not only did Appellant fail to make restitution payments, but he was also charged with multiple other crimes. As such, the Jackson Circuit Court did not abuse its discretion in revoking Appellant's probation. *Gilmore*, 587 S.W.3d at 629. For these reasons, we affirm the order of the Jackson Circuit Court revoking Appellant's probation.

ALL CONCUR.

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