

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000640-MR

CHARLES JOSEPH DEAN, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE , STEPHEN K. MERSHON, JUDGE
INDICTMENT NO. 01-CR-001367

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KELLER, LAMBERT, AND STUMBO, JUDGES.

LAMBERT, JUDGE: Charles Joseph Dean appeals from a revocation of his probation by the Jefferson Circuit Court. For the reasons stated herein, we affirm.

Dean was sentenced on June 7, 2002, to probation for a ten-year Persistent Felony Offender (PFO) I sentence. On October 8, 2003, the Commonwealth moved to revoke probation.

At the hearing, a probation and parole officer testified that they found Dean at an address different than that listed in his parole file. When Louisville Metro Police officers went to this address, Dean answered the door and gave consent for the officers to

enter. In plain view, the officers observed marijuana. A more thorough search following that discovery revealed thirteen rocks of crack cocaine, cash, and a handgun.

The conditions of Dean's probation included prohibition from having more than one residence or changing his residence without approval as well as the prohibition of possessing a firearm, narcotics, or any controlled substances.

At the conclusion of the hearing, the court agreed that Dean violated the conditions of his probation. The court stated in its written order that Dean had either changed his residence or had two residences and also that he was in possession of drugs and firearms. This appeal followed.

Dean argues that the court abused its discretion in revoking his probation based solely on oral testimony. We disagree.

Our review of the trial court's decision to revoke probation is limited to whether the trial court abused its discretion. *Dunson v. Commonwealth*, 57 S.W.3d 847, 848 (Ky.App. 2001). We have long held that, “[o]ne may retain his status as a probationer only as long as the trial court is satisfied that he has not violated the terms or conditions of the probation.” *Tiryung v. Commonwealth*, 717 S.W.2d 503, 504 (Ky.App. 1986). We also held in *Childers v. Commonwealth*, 593 S.W.2d 80, 81 (Ky.App. 1979) that in a probation revocation hearing, formal procedures and rules of evidence will not be employed. *See e.g., Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *United States v. Farmer*, 512 F.2d 160 (6th Cir. 1975). Finally, we follow the principle enunciated by the United States Supreme Court that in a probation revocation proceeding the defendant is

not entitled to the “full panoply of rights” accorded one not yet convicted in that he is deprived of only a conditional as opposed to an absolute liberty. *Morrissey v. Brewer*, 408 U.S. 471 (1972).

It appears that these decisions effectively dispose of Dean's argument that the Commonwealth was required to provide evidence as it would in an actual trial on the merits. The testimony was overwhelming that Dean had violated the terms of his probation and a probation violation need only be shown by a preponderance of the evidence. *Murphy v. Commonwealth*, 551 S.W.2d 838, 841 (Ky.App. 1977).

Accordingly, we find no abuse of discretion and therefore affirm the Jefferson Circuit Court.

ALL CONCUR.

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