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SUPREME COURT GRANTED DISCRETIONARY REVIEW:  
MAY 14, 2008  
(FILE NO. 2007-SC-0570-D)

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2006-CA-001605-MR

LAWRENCE EVERETT ALLEMAN

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE JANET P. COLEMAN, JUDGE  
ACTION NO. 03-CR-00410

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: COMBS, CHIEF JUDGE; NICKELL AND WINE, JUDGES.

WINE, JUDGE: On August 29, 2003, a Hardin County grand jury indicted Lawrence Everett Alleman on two counts of complicity to obtain a controlled substance by fraud, false statement or forgery, and one count each of resisting arrest and being a first-degree persistent felony offender. Thereafter, Alleman accepted the Commonwealth's offer on a

plea of guilty to the charges in exchange for the Commonwealth's recommendation of a sentence of twelve years, with the sentence probated for five years. The Commonwealth further recommended that this sentence would run consecutively with a prior sentence imposed by the Montgomery Circuit Court. The trial court sentenced Alleman in accord with the Commonwealth's recommendation, and Alleman was released on probation on November 18, 2004.

After his release, Alleman checked in with the probation and parole office in Menifee County, where he was being supervised on parole for the Montgomery County sentence; but, he failed to report to the probation and parole office in Hardin County. On July 29, 2005, the trial court issued an arrest warrant for Alleman, charging him with absconding from supervision. He was arrested on that warrant on November 7, 2005.<sup>1</sup>

Thereafter, Alleman requested a formal probation revocation hearing, which the trial court conducted on June 20, 2006. At the conclusion of the hearing, the trial court revoked Alleman's probation, finding that Alleman had violated the conditions of his release. Alleman now appeals to this Court. Finding that the trial court failed to make necessary written findings of fact supporting the revocation, we reverse and remand.

On appeal, Alleman raises two due process arguments. First, he contends that the trial court failed to enter written findings setting out the basis for revoking his probation. Second, Alleman argues that the judgment did not specifically set out that he

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<sup>1</sup> The record indicates that Alleman's parole on the Montgomery County sentence was revoked in a separate proceeding.

was required to report to the probation and parole offices in both Menifee and Hardin Counties. Therefore, Alleman contends that he was not given adequate notice that his failure to report in Hardin County would violate the terms of his probation.

“Kentucky courts have repeatedly held that there is no constitutional right to [probation or] parole, but rather [they are] matter[s] of legislative grace or executive clemency.” *Land v. Commonwealth*, 986 S.W.2d 440, 442 (Ky. 1999); *Tiryung v. Commonwealth*, 717 S.W.2d 503 (Ky.App. 1986). “[A probationer] may retain his status . . . only as long as the trial court is satisfied that he has not violated the terms or conditions of the probation.” *Tiryung*, 717 S.W.2d at 504. Furthermore, a probationer is not entitled to the full panoply of due process rights required for criminal prosecutions. *Marshall v. Commonwealth*, 638 S.W.2d 288, 289 (Ky.App. 1982).

Nevertheless, in *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973), the United States Supreme Court set forth the minimum requirements of due process in revocation proceedings: (1) written notice of the claimed violations of probation; (2) disclosure to the probationer of the evidence against him; (3) opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses, unless the hearing officer specifically finds good cause for not allowing confrontation; (5) a neutral and detached hearing body; and (6) a written statement by the fact finder as to the evidence relied upon and the reasons for revoking parole. *Gagnon*, 411 U.S. at 786, 93 S.Ct. at 1762. These requirements are also set out in KRS 533.050(2).

In this case, Alleman was provided with a written notice of the violations, he was informed of the evidence against him, he was given an opportunity at the hearing to speak and produce evidence, and he was given an opportunity to cross-examine the witnesses against him. The trial court did not enter written findings setting out the evidence which it relied upon or its reasons for revoking probation. Alleman urges that the trial court's failure to make written findings requires reversal, citing *Medicus v. State*, 664 N.E.2d 1163 (Ind. 1996).

We agree. The trial court did not make written findings of the evidence relied on and the reasons for revoking Alleman's probation. The trial court's order states only that Alleman's probation is revoked because he violated the conditions of his probation. The court did not state the specific conditions which Alleman violated, nor did it detail the evidence in support of this conclusion. This does not meet the *Gagnon* standard. The failure of the trial court to make written findings of the grounds for revocation is an error which may be corrected by remand. *Rasdon v. Commonwealth*, 701 S.W.2d 716 (Ky.App. 1986).

The purposes of the written statement requirement are to help "insure accurate factfinding with respect to any alleged violation" and to provide "an adequate basis for review to determine if the decision rests on permissible grounds supported by the evidence." *Black v. Romano*, 471 U.S. 606, 613-14, 105 S.Ct. 2254, 2258-59, 85 L.Ed.2d 636 (1985). We note that the Commonwealth clearly set out the evidence supporting the probation revocation in the record. However, the trial court made no findings, oral or written, that it was relying on that evidence as a basis to revoke

Alleman's probation. Moreover, there is a significant factual question about whether Alleman understood his reporting obligations.

As the Commonwealth notes, the terms of Alleman's probation were set out in the final judgment and sentence entered on May 17, 2004. Although Alleman did not sign these conditions, the court read these conditions to him and gave him an opportunity to review them before it entered the judgment. Thus, he clearly had notice of the conditions of his probation. But the record is less clear whether Alleman understood that he was obligated to report to both the Hardin and the Menifee County probation and parole offices. Even the trial court observed that supervision of probation or parole in multiple counties is not the usual circumstance.

Admittedly, Alleman's actual conduct undermines his argument that he did not understand his obligation to report to both the Hardin and Menifee County offices. First, he made no effort to contact the Hardin County office to clarify his obligations. The wording of the judgment should have at least suggested to Alleman that he should have made such inquiries. Second, and more importantly, the record further indicates that Alleman absconded from his parole supervision in Menifee County and a parole violation warrant was issued in that matter on June 16, 2005. And when he was arrested on November 7, 2005, he was seen in a vehicle which had been reported stolen. Alleman fled when he was approached by the police and was later found hiding in his sister's house.

This conduct may have served as a valid basis to revoke Alleman's probation. However, the trial court made no findings stating that it was relying on this

evidence. Consequently, we must remand this matter for the necessary written findings of fact.

Accordingly, the order of the Hardin Circuit Court revoking Alleman's probation is reversed and this matter is remanded to the trial court for written findings of fact.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Roy A. Durham II  
Assistant Public Advocate  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

C. David Yates  
Assistant Attorney General  
Frankfort, Kentucky