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SUPREME COURT CLERK

Commonwealth of Kentucky

Supreme Court
No. 2006-SC-460

COMMONWEALTH OF KENTUCKY

APPELLANT

vs.

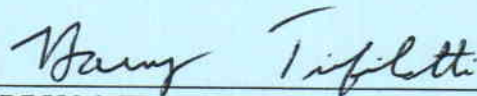
Appeal from Jefferson Circuit Court
Hon. Geoffrey P. Morris, Judge
Indictment No. 00-CR-0050

CAROLYN HUFFINES

APPELLEE

BRIEF FOR APPELLEE CAROLYN HUFFINES

Submitted by:



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CERTIFICATE OF SERVICE

I certify that the record on appeal has been mailed to the Clerk of the Court and that a copy of the Brief for Carolyn Huffines has been mailed this 6th day of February, 2007 to the Hon. Geoffrey P. Morris, Judge, Jefferson Circuit Court, Division Thirteen, Judicial Center, 700 West Jefferson Street, Louisville, Kentucky, 40202; Hon. Michael L. Harned, Assistant Attorney General, Office of Criminal Appeals, Attorney General's Office, 1024 Capital Center Drive, Frankfort, Kentucky 40601; and to the Hon. R. David Stengel, Commonwealth's Attorney, 514 West Liberty Street, Louisville, Kentucky 40202.



BARRY M. TRIFILETTI
ATTORNEY FOR APPELLEE

INTRODUCTION

This is a criminal case in which the Court of Appeals reversed the trial court's order revoking Appellee's probation and this Court subsequently granted discretionary review from the Court of Appeal's action.

STATEMENT CONCERNING ORAL ARGUMENT

The Appellee does not believe that oral argument is necessary in this appeal because the issues are sufficiently addressed in the parties' briefs.

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COUNTERSTATEMENT OF THE CASE

On February 15, 2000 Appellee pleaded guilty to forgery of a prescription. She was sentenced to one year imprisonment which was probated for five years. (Transcript of Record, herein "TR," 35:37.). Thus, the maximum expiration date for the probationary period was February 15, 2005.

On December 6, 2004 the Commonwealth filed a motion to revoke the Respondent's probation. (TR 47). The case was continued to February 7, 2005 for a hearing on the revocation motion. (TR 58). On January 13, 2005, the Commonwealth filed a supplement to its motion and the hearing remained scheduled for February 7, 2005. (TR60).

On February 7, 2005 Appellee appeared at the hearing and attorney for the Commonwealth, Shelly Lemons was not present (Supplemental Tape 2/07/05, 12:02:08). On the Court's own motion the hearing was rescheduled for February 14, 2005.

On February 14, 2005 both parties were present but the case was continued over the Commonwealth's objection to March 28, 2005. On March 28, 2005 the Appellee was not present as she was incarcerated in another county and the case was continued to April 12, 2005. On April 12, 2005 the Appellee was still incarcerated in another county and the case was continued to May 9, 2005.

On May 9, 2005 the revocation hearing was finally held. Appellee contended that the trial court's jurisdiction to consider the Commonwealth's revocation motion expired on February 15, 2005 which was the date her probationary period ended (Tape 5/09/05, 11:29:09.)

In a 2-1 opinion, the Court of Appeals reversed the trial court's order revoking Appellee's probation. Relying on KRS 533.020(1) the majority determined that the order revoking probation was entered after the expiration of the period of probation, and therefore the trial court lacked jurisdiction to revoke the Appellee's probation.

This Court granted the Commonwealth's subsequent motion for Discretionary Review.

ARGUMENT

THE COURT OF APPEALS CORRECTLY RULED THAT THE TRIAL COURT LACKED JURISDICTION TO REVOKE RESPONDENT'S PROBATION AFTER FEBRUARY 15, 2005 ACCORDING TO KRS 533.020(1)

The Court of Appeals was correct in its determination that the trial court lacked jurisdiction to revoke Appellee's probation. The Court of Appeals correctly applied 533.020(1) which states in relevant part that:

" . . .if the defendant commits an additional offense or violates a condition [the court may] revoke the sentence at any time prior to the expiration or termination of the period of probation." (emphasis added).

Since the termination of Appellee's probationary period was February 15, 2005 the Court acted out of its jurisdiction by purportedly revoking her probation months later.

The Court of Appeals looked at the clear language of KRS 533.020 and stated:

"KRS 533.020(1) states in clear and unambiguous terms that the Court may revoke probation at 'at any time prior to the expiration or termination of the period of probation.' This language is subject to but one interpretation, that being probation must be revoked, if at all, before the probationary period expires."

In Appellee's original brief to the Court of Appeals she argued additional statutory reasons as well as caselaw why her probation should not have been revoked, but the Court of Appeals felt that those issues were moot as the Court found:

"Huffines reliance on KRS 533.020(1) is wholly proper and disposes of her claim of error. Again, that statute limits revocation to the probationary period . . . Probation revocation should have occurred in the matter at bar, if at all, before Huffines probationary period ended, and the Circuit Court erred in failing to so rule."

In Curtsinger v. Commonwealth, Ky., 549 S.W.2d 515 (1977), the Defendant was placed on probation on February 20, 1968. The Supreme Court of Kentucky held that the Court could not revoke his sentence because the Court lost jurisdiction to do so on February 20, 1973.

"Appellant remained on probation continuously from February 20, 1968 until February 20, 1973. On the later date no warrant issued by the Court was pending against him and his probation had not been revoked. Therefore, by operation of statute, the Jefferson Circuit Court lost jurisdiction to revoke Appellee's probation on February 20, 1973. KRS 439.270."

**THE APPELLANT'S ATTEMPT TO SHIFT THE
FOCUS AWAY FROM THE TRIAL COURT'S
ACTIONS TO THE APPELLEE IS BOTH
ERRONEOUS AND MISPLACED.**

In his argument the Appellant attempts to shift the focus away from the trial court's failure to act within the probationary period which expired on February 15, 2005 by claiming that the Appellee was "engaging in tactics which caused the hearing to be conducted after the expiration of the probationary period." But the Appellant's assertions are erroneous, as Appellee did not request a continuance at any hearings prior to the expiration of her probationary period. Appellee was present on February 7, 2005 but the court notes that the attorney for the Commonwealth, Shelly Lemons, was not present. (Supplemental Tape 2/07/05, 12:01:55.) Appellee did not request any continuance that day (Supplemental Tape 2/07/05, 12:03:20) and the case was continued on the court's own motion. At the next hearing date on February 14, 2005 the Appellee again did not request any continuance. The attorney for the Commonwealth advised the Court that "if we do not revoke her before her maximum expiration . . . we cannot have the hearing" as her probation expired on February 15, 2005. (Supplemental Tape 2/14/05,

12:08:00 and reiterated 12:09:28." Instead, the Court continued the case *on its own motion* to March 28, 2005, over the objection of the Commonwealth (Supplemental Tape 2/14/05, 12:12:17).

The Appellant cites several cases from other jurisdictions as support for his argument, but all of those cases involved different facts. In each of the cases movant cites the defendant either requested a continuance or the hearing was otherwise delayed because of explicit request by the defendant. However, in this case the Appellee never requested any continuance at either of the hearings scheduled before the expiration of her probation.

Without any request from the Appellee the trial court continued the hearings after the February 15, 2005 probation expiration date, and therefore Appellant's focus on the Appellee's conduct is misplaced, as it was the trial court's actions and not the Appellee's that resulted in the probation revocation occurring after its expiration date. Furthermore, the Court of Appeals noted:

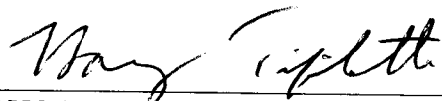
"In the matter at bar Huffines neither sought nor received an extension of her probation beyond the five year period authorized by statute."

The trial court could have gone forward with the hearing on February 14, 2005, but it chose not to do so and continued the case past the expiration of her probationary period. If the Court wishes to act, it must do so during the limitations of the probation period, and that period expired on February 15, 2005. Curtsinger v. Commonwealth, Ky., 549 S.W.2d 515 (1977).

CONCLUSION

For the above-stated reasons, the Court of Appeals opinion should be affirmed.

Respectfully submitted,



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