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COMMONWEALTH OF KENTUCKY
KENTUCKY SUPREME COURT
FILE NO. 2009-SC-312

DISCRETIONARY REVIEW FROM 2007-CA-2259

CAMERON HUNT

APPELLANT

v. APPEAL FROM HICKMAN CIRCUIT COURT
HON. TIMOTHY A. LANGFORD, JUDGE
INDICTMENT NO. 06-CR-00031

COMMONWEALTH OF KENTUCKY

APPELLEE

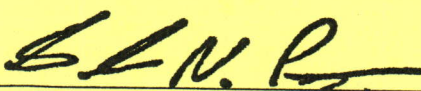
REPLY BRIEF FOR APPELLANT

Submitted by:

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The undersigned does certify that copies of this Reply Brief were mailed, first class postage prepaid, to the Hon. Timothy A. Langford, Judge, 1st Circuit, 8574 State Route 1128 RR 1, Hickman, KY 42050; the Hon. Mike Stacey, Commonwealth's Attorney, P.O. Box 788, Wickliffe, Kentucky 42087; the Hon. Jamey Mills, Assistant Public Advocate, Department Of Public Advocacy, 400 Park Avenue, Suite B, Paducah, Kentucky 42001; and to Hon. Wm. Robert Long, Jr., Asst. Attorney General, Office of Criminal Appeals, 1024 Capital Center Drive, Frankfort, Kentucky 40601 on March 4th, 2010. I hereby further certify that the record on appeal was not checked out for the purpose of this Reply Brief.



SAMUEL N. POTTER

Purpose of the Reply Brief

The purpose of this Reply Brief is to address only those matters presented in the Brief For Appellee that deserve further comment, argument, and/or citation of additional authority.

Statement Regarding Oral Argument

Mr. Hunt welcomes oral argument if the Court feels it would help to render a fair and just decision in his case.

Argument

I. Cameron Hunt Deserves a New Revocation Hearing.

Rules matter. Rules matter even for hearings regarding the revocation of probation. Rules matter even for hearings regarding the revocation of probation for young, African-American men who had a drug problem. Yet, the circuit court conducted the hearing in which Cameron Hunt's probation was revoked in a manner that not only contradicted the plain language of the rules governing probation revocation hearings but degraded the reliability of that hearing and the judicial system to which it belongs.

Three structural errors eroded the trustworthiness of Mr. Hunt's revocation hearing. First, the court did not provide Mr. Hunt with access to a lawyer until the actual revocation hearing occurred on September 20, 2007, even though a Notice of Preliminary Hearing that listed seven alleged violations had been filed on September 14, 2007. TR, 54. Had a lawyer been appointed to represent Mr. Hunt on September 14 or at least sometime before the actual revocation hearing, Mr. Hunt and his lawyer could have prepared a defense.

The Brief for Appellee exposes the harm that accrued from this error. The Appellee wrote, "[l]ikewise, in his brief before this Court the appellant fails to offer any explanation for his decision to abscond from

supervision.” Brief for Appellee, 5. This was the same error the Court of Appeals made in its opinion that Mr. Hunt refuted in his Brief for Appellant, 5-6.

When a lawyer is assigned to a case the day the revocation hearing is to be held, no effective defense can be prepared. Had the lawyer been given time, Mr. Hunt's statement that he went to see his probation officer but was turned away would have been investigated. VR No. 1: 9/20/07; 10:44:30. If Mr. Hunt's statement had been confirmed, this would constitute a viable defense. He ought to be entitled to rely on the assertions of his probation officer without repercussions. He showed up for his meeting, but was told to come back the next day. The next day there was a warrant for his arrest, which is why he never reported again. Had a lawyer been timely provided to Mr. Hunt, the lawyer could have, should have, and would have investigated and then presented this defense. Because this was not done, reversible error occurred.

The circuit court committed the second error when it utilized the wrong burden of proof to revoke Mr. Hunt's probation. The circuit court required Mr. Hunt to "show cause" why his probation should not be revoked. VR No. 1: 9/20/07; 10:48:35. However, revocation is proper only when the Commonwealth proves a violation by a preponderance of the evidence. *Rasdon v. Commonwealth*, 701 S.W.2d 716, 719 (Ky. App.

1986). "Semantics" matter in the practice of law. Opinion, 5-6. Said another way, words mean things. 'Show cause' means something different than 'preponderance of the evidence.' In Mr. Hunt's case, the circuit court revoked his probation because Mr. Hunt did not show cause why it should not be revoked. This is substantially different from revoking Mr. Hunt's probation because the Commonwealth proved the allegation by a preponderance of the evidence. Burden shifting occurred, so did reversible error.

The third error occurred when the circuit court forced Mr. Hunt to answer an incriminating question against his will. The court asked Mr. Hunt why he did not try to straighten out the situation with his probation officer when he learned there was a problem. Mr. Hunt said nothing. Then the court asked Mr. Hunt if he did nothing because a warrant had already been issued. After being told by his lawyer that he had to answer, Mr. Hunt said yes. VR No. 1: 9/20/07; 10:44:30-10:46:00. The United States Supreme Court does not require probationers to incriminate themselves. Rather, the Court affords them the opportunity to be heard. *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973); *Murphy v. Commonwealth*, 551 S.W.2d 838, 840 (Ky. App. 1977).

In conclusion, Mr. Hunt deserves a new revocation hearing. Why? Rules matter. Rules matter because when they are broken—or more

aptly, shattered—as in Mr. Hunt’s case, “it seriously affect[s] the fundamental fairness and basic integrity of the proceedings.” *U.S. v. Tutiven*, 40 F.3d 1, 7-8 (1st Cir. 1994)(quoted in Brief for Appellee, 4-5). The three errors that occurred below “seriously affect[ed] the fairness, integrity, or public reputation’ of a judicial proceeding.” *Page v. Commonwealth*, 149 S.W.3d 416, 422 (Ky. 2004)(quoted in Brief for Appellee, 5). Counsel was not timely offered to Mr. Hunt so that he had no time to prepare a defense. The wrong standard was used to revoke his probation, which required him to justify his actions. He was made to answer a question that he did not want to answer because it incriminated him. This is palpable error that resulted in a manifest injustice because these three errors debased the basic integrity of the judicial proceeding below. Reversal is required.

Conclusion

For these reasons and those stated in the Brief for Appellant, Mr. Hunt respectfully requests this Court to reverse and remand his case to the Hickman Circuit Court with instructions to hold a new revocation hearing that conforms to the minimum due process requirements of the U.S. and Kentucky Constitutions. Further, Mr. Hunt respectfully requests any and all other relief this Court determines is appropriate.

Respectfully submitted,



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