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**Commonwealth of Kentucky
Supreme Court
No. 2009-SC-312**

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SUPREME COURT CLERK

CAMERON HUNT

APPELLANT

V.

Appeal from the Hickman Circuit Court
Honorable Timothy A. Langford, Judge
Indictment No. 06-CR-00031

COMMONWEALTH OF KENTUCKY

APPELLEE

Brief for Commonwealth

Submitted by:

JACK CONWAY

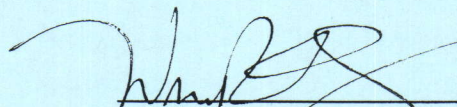
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CERTIFICATE OF SERVICE

I certify that this Brief for Appellee was mailed February 18, 2010, to the Hon. Timothy A. Langford, Chief Circuit Judge, Fulton County Courthouse, 114 East Wellington Street, P.O. Box 167, Hickman, Kentucky; sent electronically to Hon. Mike Stacy, Commonwealth's Attorney, 133 North Fourth Street, PO Box 788, Wickliffe, Kentucky 42087, and sent via messenger mail to Hon. Samuel N. Potter, counsel for appellant, 100 Fair Oaks Lane, Suite 302, Frankfort, Kentucky 40601. I further certify that the record has been returned to the Clerk.



Wm. Robert Long, Jr.
Assistant Attorney General

INTRODUCTION

The Commonwealth responds to the direct appeal of Cameron Hunt taken from the Hickman Circuit Court's Final Judgment and Revocation of Probation in which the trial court revoked Mr. Hunt's probation and sentenced him to ten years imprisonment. The Court of Appeals affirmed the revocation of Mr. Hunt's probation and this Court granted discretionary review of that decision.

STATEMENT CONCERNING ORAL ARGUMENT

The Commonwealth does not believe that oral argument is necessary in this appeal because the issue raised by the appellant is sufficiently addressed in the parties' briefs.

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COUNTERSTATEMENT OF THE CASE

On November 16, 2006, the appellant was indicted by a Hickman County Grand Jury for the offenses of unauthorized use of an automobile (first offense), Speeding 25 MPH over the limit, operating a motor vehicle while license was suspended for DUI, first degree fleeing and evading police, first degree wanton endangerment, third degree criminal trespass, possession of marijuana and tampering with physical evidence. (TR at 15-17). Appellant filed his Motion to Enter Guilty Plea on December 21, 2006. (TR at 30). Pursuant to the terms of the plea agreement the appellant entered a plea of guilty to wanton endangerment, fleeing and evading, driving on a DUI suspended license, possession of marijuana, criminal trespass and disorderly conduct. (TR at 30). In exchange for appellant's plea of guilt to these charges the Commonwealth recommended a total sentence of three years imprisonment. (TR at 30). At final sentencing on March 1, 2007, the appellant agreed to forego the sentence recommendation offered by the Commonwealth and instead be sentenced to a total sentence of ten years if the trial court would release him on probation. (VR1; 3/1/07, 10:31:30 *et seq*). Once the trial court was convinced the appellant understood the risk he was taking by trading a longer sentence for immediate release on probation, the court formally sentenced the appellant to ten years probated. (Id.)

In addition to the condition that are typically associated with a probated sentence, appellant's probation was also conditioned on enrolling and completing a drug court program, electronic monitoring, 200 hours of community service, earn his GED, and complete the "scared straight" program. (TR at 42-44). On March 20, 2007, appellant's probation officer prepared a report detailing appellant's failure to abide by the conditions

of his probation and requesting a warrant for appellant's arrest. (TR at 53). Specifically, the report indicated that the appellant had not paid an outstanding warrant on traffic violation, had twice missed scheduled drug court assessment, failed to get his electronic monitoring device installed, and that officers could not reach appellant at any contact number because they had all been disconnected. (TR at 53). Based on this information a warrant for appellant's arrest was generated on April 12, 2007. (TR at 47). Appellant was not apprehended and the warrant was not served until September 10, 2007. (TR at 50). On September 13, 2007, the appellant was served with a Notice of Preliminary Hearing wherein he was noticed that a preliminary revocation hearing would be held on September 20, 2007. That document also outlined seven alleged violations of appellant's probation conditions and explained appellant's rights to present and/or question witnesses, be represented by a lawyer, etc. (TR at 54). Specifically, the alleged probation violation were as follows:

1. Failure to pay Supervision Fees – Subject has not paid any of his supervision fees.
2. Failure to Enter and Complete Drug Court Program – Subject did not complete assessment or attend Drug Court Program.
3. Failure to obtain G.E.D. – Subject has not worked on or obtained G.E.D.
4. Failure to do Electronic Monitoring/Home Incarceration - Subject did not get hooked up on Electronic Monitoring.
5. Subject did not attend and complete Scared Straight Program – Subject absconded supervision before he was given a date to attend Scared Straight.

6. Failure to complete 200 hours of Community Service Work – Subject has not completed any of Community Service Work.

7. Failure to pay Fines of \$600 – He currently has a balance of \$600 owed to the Circuit Clerks Office per Circuit Clerk as of 9/12/07.

(TR at 54).

On September 20, 2007, appellant appeared before the Hickman Circuit Court with is newly appointed attorney (appellant had employed private counsel for the guilty plea) for the scheduled revocation hearing. (VR1; 9/20/07, 10:39:00 *et seq*). During the hearing the judge asked appellant's probation officer to verbally detail the alleged probation violations mentioned in the preceeding paragraph. (VR1; 9/20/07, 10:41:55). Thereafter, the trial court inquired of the appellant and his attorney whether they had any explanation or defense to the alleged violations. (VR1; 9/20/07, 10:44:01). Appellant responded by essentially conceding the alleged violations, but explaining that once he learned a warrant had been issued for him, evidently because of failures to abide by the conditions of his probation, he absconded from supervision. (VR1; 9/20/07, 10:44:35). Appellant made no further defense, but asked that he be given a second chance because his drug screen when he was apprehended was clean and because he could obtain a job through his mother's place of employment. (VR1; 9/20/07, 10:46:00). Ultimately, the trial court found that the appellant had indeed violated the terms and conditions of his probation and thus, revoked appellant sentencing him to ten years imprisonment. (VR1; 9/20/07, 10:48:36; TR at 61). Appellant tendered his Notice of Appeal of the revocation on October 11, 2007; however, the notice was not filed by the clerk until November 1,

2007. (TR at 74). Additional facts will be developed below as necessary to support the Commonwealth's arguments.

ARGUMENT

I.

THE TRIAL COURT PROPERLY REVOKED APPELLANT'S PROBATION.

The appellant claims that he, "deserves a new revocation hearing because due process was violated by the untimely appointment of a lawyer, shifting the burden to him, and forcing him to speak at the hearing." (Appellant's Brief at 3). However, the record on appeal reveals that although the revocation hearing was handled in an informal manner, appellant's rights were protected and that the trial court properly revoked appellant's probation.

Candidly, appellant concedes that this issue is not preserved for appellate review, but nonetheless request palpable error review pursuant to RCr 10.26. Pursuant to RCr 10.26 this Court may address an alleged error not properly preserved for review only if the alleged error is palpable and affects the substantial rights of a party. Further, relief may be granted only upon a determination that the alleged error has resulted in manifest injustice. Brock v. Commonwealth, 947 S.W.2d 24 (Ky. 1997). Such a showing requires that "the error must seriously affect the fairness, integrity or public reputation of judicial proceedings." Id., at 28; United States v. Olano, 507 U.S. 725, 731 (1993). Stated differently, "[e]rror rises to this level only when it is so shocking that it seriously affected the fundamental fairness and basic integrity of the proceedings conducted below." United

States v. Tutiven, 40 F.3d 1, 7-8 (1st Cir. 1994). The Kentucky Supreme Court has held that to show “manifest injustice,” the reviewing court “must find, upon consideration of the whole case, a substantial possibility that the result would have been different but for the alleged error.” Ramsey v. Commonwealth, 157 S.W.3d 194, 199 (Ky. 2005) (citing Partin); Page v. Commonwealth, 149 S.W.3d 416, 422 (Ky. 2004) (for error to be palpable, it must “seriously affect the ‘fair-ness, integrity, or public reputation’ of a judicial proceeding”); Stone v. Commonwealth, 456 S.W.2d 43, 44 (Ky. 1970) (manifest injustice applies where appellate court “believes there may have been a miscarriage of justice”). Recently, the Kentucky Supreme Court further clarified the standard for “manifest injustice” by stating, “the required showing is probability of a different result or error so fundamental as to threaten a defendant's entitlement to due process of law.” Martin v. Commonwealth, 207 S.W.3d 1, 3 (Ky. 2006). In this case it is readily evident that no manifest injustice occurred.

As demonstrated in the Counterstatement of the Case above, the appellant absconded from supervision shortly after being placed on probation and thereby violated nearly every condition of his probation. Further, once the appellant was apprehended he was given written notice of the alleged violations and the opportunity to refute any allegation at the revocation hearing. Rather than offering any explanation or defense to the claimed violations, the appellant essentially conceded the alleged violations and merely asked the trial court for a second chance. (See Counterstatement above). Likewise, in his brief before this Court the appellant fails to offer any explanation for his decision to abscond from supervision. Since it is evident from the record that the

appellant did in fact violate the terms of this probation the outcome any revocation hearing is obvious and no “manifest injustice” occurred. For these reasons the Court of Appeals properly held that,

It is undisputed that Hunt absconded within a few days of being placed on probation. The probation officer set forth the allegations of Hunt’s violations and the reasons therefore in a manner sufficient to cary the Commonwealth’s burden of proof. Hunt conceded many of the alleged violations and stated he had absconded after learning of the warrant for his arrest. These admission alone were sufficient to support the trial court’s decision.

(Opinion Affirming, No. 07-CA-2259 at 5).

Further, it is evident that the informality of the hearing did not deprive appellant of any fundamental due process right. First, the Court of Appeals correctly found that mere fact that counsel was appointed only a short time prior to the commencement of the revocation hearing was not in and of itself ground for reversal. *Id.* at 5; *See Harrison v. Commonwealth*, 436 S.W.2d 259 (Ky. 1969). As the lower court noted, appointed counsel, “. . .had the opportunity to request a continuance in order to converse with Hunt and attempt to prepare a defense,” but chose not to do so. *Id.* at 4-5.

Second, the burden of proof at the probation revocation hearing was not improperly shifted to the appellant. With regard to this issue the Court of Appeals properly held that,

Contrary to Hunt’s allegation, the trial court did not shift the burden to him. Although the trial court stated Hunt needed to “show cause” why his probation should not be revoked, a careful review of the hearing reveals the trial court was, in fact, merely giving Hun the opportunity to rebut the Commonwealth’s allegations and id not shift the

burden of proof to Hunt as he now suggests. The hearing was conducted in an informal manner, but the trial court ensured Hunt's rights were protected. Hunt's argument here is based wholly on semantics and does not rise to the level of palpable error.

(Opinion Affirming, No. 07-CA-2259 at 5-6).

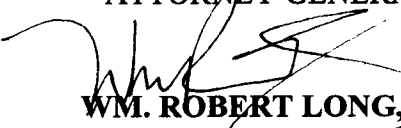
Since the Court of Appeals identified and applied the correct standard when reviewing appellant's unpreserved claims of error and reached the correct conclusions (i.e. that no "manifest injustice" resulted from the revocation) with regard to appellant's claims its decision affirming the revocation of appellant's probation should be affirmed.

CONCLUSION

WHEREFORE, for the above-stated reasons, the Commonwealth respectfully requests that the Hickman Circuit Court's Final Judgment and Revocation of Probation in which the trial court revoked Mr. Hunt's probation and sentenced him to ten years imprisonment be affirmed.

Respectfully submitted,

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