

COURT OF APPEALS OF KENTUCKY

Billy McKenzie v. Commonwealth of Kentucky

McKenzie · No. 2024-CA-0134-MR · Decided April 24, 2026

SUMMARY

The Kentucky Court of Appeals reviewed the revocation of Billy McKenzie's probation following convictions for two counts of flagrant nonsupport. The court affirmed the probation revocation, concluding that McKenzie received due process and failed to demonstrate bona fide efforts to satisfy his child-support obligations. It reversed the imposition of consecutive sentences because the original sentencing orders did not specify consecutive terms, and remanded for concurrent five-year sentences.

CASE DETAILS

COURT	Court of Appeals of Kentucky
WRITING FOR THE COURT	Acree, J.; Combs, J.; Eckerle, J.
JURISDICTION	Commonwealth of Kentucky Court of Appeals
DECIDED	April 24, 2026
DOCKET	2024-CA-0134-MR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	McKenzie appealed the Boyd Circuit Court's order revoking probation and imposing consecutive five-year prison sentences in two flagrant nonsupport cases.
STANDARD OF REVIEW	Probation revocation is reviewed for abuse of discretion. Whether an unpreserved sentencing error resulted in an illegal sentence may be reviewed because an appellate court is not required to affirm an illegal sentence solely because the issue was not preserved.
PRECEDENTIAL VALUE	published
PARTIES	Billy McKenzie v. Commonwealth of Kentucky

TOPICS

probation

sentencing

due process

preservation of error

appellate procedure

PRACTICE AREAS

criminal procedure

sentencing

probation

constitutional law

QUESTIONS PRESENTED

1. Whether the trial court improperly ordered McKenzie's sentences to run consecutively upon revocation of probation when the original sentencing orders did not specify concurrent or consecutive terms.
2. Whether the trial court violated due process by revoking probation for failure to make child-support payments without adequately considering McKenzie's bona fide efforts to pay and alternatives to imprisonment.

HOLDINGS

1. When the original sentencing court does not specify that multiple sentences will run consecutively, KRS 532.110(2) requires the sentences to run concurrently, and the court may not change them to consecutive sentences upon later probation revocation.
2. The trial court acted within its discretion in revoking probation because the Commonwealth proved probation violations by a preponderance of the evidence, and McKenzie did not establish that he made bona fide efforts to pay or that his nonpayment was through no fault of his own after alternative measures had failed.

KEY QUOTATIONS

"Merely pleading guilty in two separate cases does not automatically give rise to consecutive sentencing." (-4-)

"Ordering the sentences of imprisonment to run consecutively when revoking McKenzie's probation was an improper modification of the judgment." (-5-)

"To revoke probation, the Commonwealth need only prove by a preponderance of the evidence that a probationer has violated the terms of probation." (-6-)

"Instead, upon consideration of a motion for revocation for failure to comply with payment conditions, a court must determine whether (1) the defendant has made sufficient bona fide efforts to make payments and, if so, (2) whether alternative punishments might satisfy the state's penological interests or whether imprisonment is still necessary for the purposes of punishment or deterrence." (-7-)

FACTUAL BACKGROUND

McKenzie pleaded guilty to one count of flagrant nonsupport in each of two prosecutions involving children by two mothers. Each plea agreement provided for a five-year sentence probated for five years, conditioned on current child-support payments and payment of arrearages in monthly installments. During probation, McKenzie repeatedly failed to report, made very few payments, missed hearings, absconded from supervision, and did not comply with graduated sanctions. At the revocation hearing, he testified that full-time employment prevented him from reporting or completing the requirements, but he did not explain why he had failed to make substantial payments.

PROCEDURAL HISTORY

McKenzie pleaded guilty in two separate flagrant nonsupport prosecutions and received five-year sentences probated for five years subject to child-support payment conditions. After multiple failures to report, make payments, appear for hearings, and comply with graduated sanctions, the Boyd Circuit Court revoked probation and ordered the two sentences to run consecutively. The Kentucky Court of Appeals affirmed the revocation but reversed the consecutive-sentencing provision and remanded for imposition of concurrent sentences.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Boyd Circuit Court must impose the two five-year sentences to run concurrently, for a total of five years, while leaving the probation revocation affirmed.

CASES CITED

- Jones v. Commonwealth, 382 S.W.3d 22, 27 (Ky. 2011)
- Goldsmith v. Commonwealth, 363 S.W.3d 330, 334-336 (Ky. 2012)
- Commonwealth v. Lopez, 292 S.W.3d 878, 881 (Ky. 2009)
- Rasdon v. Commonwealth, 701 S.W.2d 716, 718 (Ky. App. 1986)
- Bearden v. Georgia, 461 U.S. 660, 672 (1983)
- Commonwealth v. Marshall, 345 S.W.3d 822, 823, 830-832 (Ky. 2011)
- Gamble v. Commonwealth, 293 S.W.3d 406, 411 (Ky. App. 2009)