

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001015-DG

W. E., A CHILD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ERNEST JASMIN, JUDGE
ACTION NO. 98-XX-00013

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: EMBERTON, GUIDUGLI AND MILLER, JUDGES.

GUIDUGLI, JUDGE. Appellant, W. E., a juvenile fourteen years of age at the time of this incident, was taken into custody by police and charged with the offense of second-degree burglary on January 8, 1998. On January 12, 1998, the appellant entered a conditional plea of guilty pursuant to RCr 8.09 in the juvenile session of the Jefferson District Court to the amended charge of criminal trespass in the first degree, a misdemeanor offense. Appellant waived his rights to a pre-dispositional investigation and separate dispositional hearing and was sentenced to thirty (30) days in detention. However, the 30 day sentence was

conditionally discharged by the trial judge until the appellant's eighteenth birthday. Appellant was then released to his mother. At the time of the guilty plea and disposition, appellant advised the court that he intended to litigate on appeal (pursuant to his RCr 8.09 plea) the issue of whether a conditionally discharged sentence for a misdemeanor charge could be suspended for a period in excess of two years.

Pursuant to his RCr 8.09 plea, appellant perfected his appeal with the Jefferson Circuit Court. On April 7, 1998, an opinion and order was entered by Jefferson Circuit Court Judge Ernest A. Jasmin, affirming the disposition of the Jefferson District Court, Juvenile Division, as to W.E. On August 11, 1998, the Kentucky Court of Appeals granted appellant's motion for discretionary review in this matter.

On appeal, appellant argues the juvenile court erred when it imposed a thirty (30) day conditionally discharged sentence with respect to a misdemeanor adjudication for a period in excess of two years. Appellant argues that KRS 635.060, the juvenile statute which sets forth options to juvenile courts at dispositional hearings, provides no guidance with respect to the length of time such a sentence may be conditionally discharged. As such, appellant contends one must look at the language contained in KRS 533.030, the penal code statute dealing with probation and conditional discharge. Based upon this argument, appellant contends that the circuit court's opinion and order is clearly erroneous in that the judge based his order on the erroneous belief that a conflict existed between KRS 533.020(4)

and KRS 635.060. Further, appellant argues the circuit court misinterpreted Jefferson County Dept. for Human Resources v. Carter, Ky. App., 795 S.W.2d 59 (1990). The circuit court stated that based upon Carter and Miller v. Anderson, Ky., 519 S.W.2d 826 (1975), that "...it would seem that as a matter of policy as expressed in KRS 635.060, a juvenile who becomes embroiled in the juvenile court system can expect to stay there until the court orders otherwise or he or she reaches his or her eighteenth birthday."

Lastly, W.E. argues that the options of probation and commitment are treatment options and tools that the juvenile court can use for the purpose of rehabilitation of young offenders, while conditional discharge of a detention sentence is tantamount to serving "jail time" for adult offenders and thus strictly a punishment option. Thus, appellant contends there is a rational basis to permit a juvenile to be on probation or commitment (receiving treatment) for a longer period than one who has received a conditionally discharged sentence (only the threat of punishment in detention). We disagree with appellant's arguments; hence, we affirm.

KRS 635.060 in effect on January 8, 1998, reads, in pertinent part, as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing may:

- (1) Order the child or his parents, guardian, or person exercising custodial control to make restitution or reparation to any injured person to the extent, in the sum and upon the

conditions as the court determines. However, no parent, guardian, or person exercising custodial control shall be ordered to make restitution or reparation unless the court has provided notice of the hearing, provided opportunity to be heard, and made a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency; or

- (2) Place the child on probation, home incarceration, or under supervision in the child's own home or in a suitable home or boarding home, upon the conditions that the court shall determine. A child placed on probation, home incarceration, or supervision shall be subject to the visitation and supervision of a juvenile probation officer of the Department of Juvenile Justice. Except as provided in KRS 635.083, a child placed on probation, home incarceration, or supervision shall remain subject to the jurisdiction of the court until the child becomes eighteen (18) years of age, unless the child is discharged prior thereto by the court, except that if a person is placed on probation, home incarceration, or supervision after the person reaches the age of seventeen (17) years and six (6) months, the probation, home incarceration, or supervision shall be for a period not to exceed one (1) year; or
- (3) Commit the child to the custody or guardianship of the Department of Juvenile Justice, a child-caring facility, a child-placing agency authorized to care for the child, or place the child under the custody and supervision of a suitable person. If the child is detained in an approved secure juvenile detention Foucault, juvenile holding facility, or intermittent holding facility in accordance with KRS 15A.200 to 15A.240 at the time the child is committed to the custody of the Department of Juvenile Justice, the Department of Juvenile Justice shall accept physical

custody of the child, remove the child from the approved secure juvenile detention facility or juvenile holding facility, and secure appropriate placement within seven (7) days of the time of commitment. All orders of commitment may include advisory recommendations the court may deem proper in the best interests of the child and of the public. The commitment or placement shall be until the age of eighteen (18), subject to the power of the court to terminate the order and discharge the child prior thereto, except that if the commitment or placement is after a person has reached the age of seventeen (17) years and six (6) months, the commitment or placement shall be for an indeterminate period not to exceed one (1) year. The court, in its discretion upon motion by the child and with the concurrence of the Department of Juvenile Justice, may authorize an extension of commitment up to age twenty-one (21) to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements; or

- (4) Effective July 1, 1997, if the child is fourteen (14) years of age but less than sixteen (16) years of age, order that the child be confined in an approved secure juvenile detention facility or juvenile holding facility in accordance with KRS 15A.200 for a period of time not to exceed forty-five (45) days; or
- (5) Effective July 1, 1997, if the child is sixteen (16) years of age or older, order that the child be confined in an approved secure juvenile detention facility or juvenile holding facility in accordance with KRS 15A.200 for a period of time not to exceed ninety (90) days; or
- (6) Any combination of the dispositions listed above.

The Jefferson District Court's calendar reflects that at the detention hearing W.E. entered a guilty plea to the

amended charge of criminal trespass, first degree. He was sentenced to 30 days in detention pursuant to KRS 635.060(4). That sentence was conditionally discharged until the juvenile turned eighteen. He was then released to his mother. Appellant's position would require the district court to review KRS 635.060(4) in a vacuum. We believe that KRS 635.060 must be viewed in its entirety, as well as, in conjunction with the unified juvenile code.

KRS 635.060(2) permits a child to be placed "on probation, home incarceration, or under supervision in the child's own home...upon conditions that the court shall determine." It further states that the child "shall remain subject to the jurisdiction of the court until the child becomes eighteen (18) years of age... ." KRS 635.060(3) permits placement or commitment to the Department of Juvenile Justice until the age of eighteen. KRS 635.060(6) permits any combination of the dispositions listed in subsections one through five of KRS 635.060. In effect, a juvenile who receives a conditionally discharge detention disposition and is then released to his parent is under the supervision of that parent not to commit any additional criminal offense or face imposition of the conditionally discharged sentence. Thus, under KRS 635.060(6) the combination of subsections 2 and 4 continue to give the juvenile court authority to impose a conditionally discharged sentence until age 18.

Further, under KRS 610.010(1) the juvenile session of district court has exclusive jurisdiction of a child who has

committed a public offense. Pursuant to KRS 610.010(11) the court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders...until the child...reaches the age of eighteen (18) years.

Pursuant to KRS 600.010(1), KRS Chapters 600 to 645 shall be known as the Kentucky Unified Juvenile Code. It is to be read in its entirety to effectuate its intended purposes. KRS 600.010(2) sets forth, in part, the following express legislative purposes:

- (a) The Commonwealth shall direct its efforts to promoting protection of children; to the strengthening and encouragement of family life for the protection and care of children; to strengthen and maintain the biological family unit; and to offer all available resources to any family in need of them;
- (b) It also shall be declared to be the policy of this Commonwealth that all efforts shall be directed toward providing each child a safe and nurturing home;
- (c) The court shall show that other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary;
- (d) Any child brought before the court under KRS Chapters 600 to 645 shall have a right to treatment reasonably calculated to bring about an improvement of his condition.

The unified juvenile code read as a whole gives the juvenile court authority over a child until he reaches the age of

eighteen (18) years old. Once a child is before the court, the court is mandated to provide the least restrictive but most effective services available to keep the child safe and the family together. In the case sub judice, the child entered an admission to a delinquency act. In order to follow the mandates of KRS Chapters 600 through 645 the court sought the least restrictive dispositional alternative while seeking to ensure the child would not find himself before the juvenile court again. To accomplish this goal, the trial judge entered a 30 day detention sentence yet conditionally discharged the thirty days, released the child to his parent and, in essence, stated "go home, obey your parent, do not violate any rules or laws and do not appear before this court again or you will face a harsh punishment." This is exactly what the juvenile code envisioned to deter juveniles from committing new crimes and rehabilitate young offenders. To read the statute in question as not giving the juvenile court this authority and control over a child until age eighteen (18) is contrary to the express intent of the juvenile code and a disservice to the children, parents, and general public of the Commonwealth.

The order of the Jefferson County Circuit Court affirming the orders of the District Court which conditionally discharged a 30 day sentence until the child reaches the age of eighteen is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Peter L. Schuler
Daniel T. Goyette

BRIEF FOR APPELLEE:

James Miller
Jefferson County Attorney

Chief Juvenile Defender

Louisville, KY

Jefferson District Public
Defender
Louisville, KY