

Commonwealth Of Kentucky

Court Of Appeals

NOS. 1999-CA-002317-MR
AND 1999-CA-002416-MR

CORY L. CHENAULT

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS PAISLEY & JOHN ADAMS, JUDGES
ACTION NO. 96-CR-00649 & 96-CR-00517

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: KNOPF, SCHRODER, AND TACKETT, JUDGES.

SCHRODER, JUDGE: Cory Chenault appeals the Fayette Circuit Court's revocation of his conditional discharge in 96-CR-649 and 96-CR-517. Specifically, Chenault appeals the portion of the orders that direct his six-year sentence in 96-CR-517 and 96-CR-649 to run consecutive with his twenty-six year sentence in 99-

CR-407. Having concluded the circuit court did not err, we affirm.

The facts of the case are not in dispute. In July 1996, Chenault pled guilty to one count of trafficking in a controlled substance, first degree, in 96-CR-517 and one count of possession of a controlled substance, first degree, in 96-CR-649. Chenault was sentenced to five years on the trafficking count and one year on the possession count to run consecutive for a total of six years. This sentence was probated for a period of five years by order entered August 9, 1996.

The circuit court modified Chenault's sentence on May 6, 1997, ordering him to enter drug court. On October 20, 1998, Chenault completed drug court and was placed on conditional discharge for the remainder of the probation period.

On August 16, 1999, Chenault was convicted of three new trafficking charges and a PFO II charge in 99-CR-407. Chenault was sentenced to a total of twenty-six years for these new convictions. The Commonwealth sought to revoke the conditional discharge on August 17, 1999, as a result of these new convictions.

The Fayette Circuit Court revoked Chenault's conditional discharge in 96-CR-517 and 96-CR-649 by order entered September 15, 1999. The circuit court ordered the remainder of Chenault's six-year sentence in 96-CR-517 and 96-CR-649 to run consecutive with the twenty-six year sentence in 99-CR-407. Chenault filed a notice of appeal of the conditional discharge

revocation with this Court in both 96-CR-517 and 96-CR-649. This Court consolidated these appeals on January 4, 2000.

Chenault's only contention on appeal is that the circuit court erred by applying KRS 533.060(2), as opposed to KRS 532.110(1), in ordering the six-year sentence to run consecutive with the twenty-six year sentence. Chenault was not eligible for a concurrent sentence under KRS 533.060(2), as that statute provides that sentences for crimes committed while on conditional discharge, probation or parole must run consecutive with any other sentence. Chenault argues that KRS 532.110(1) controls over KRS 533.060(2) as the former was amended and reenacted in 1998. KRS 532.110(1) gives judges discretion in determining whether a sentence should run consecutive or concurrent.

This Court recently addressed this exact statutory construction debate in White v. Commonwealth, Ky. App., 32 S.W.3d

83 (2000). In White, this Court dealt with the re-enactment of KRS 532.110(1), stating:

[T]he July 1998 amendment to KRS 532.110 did not involve an aspect of the statute that is pertinent in White's situation. The only change in the statute in 1998 was a provision in Subsection 1(c) placing a 70-year limitation on the aggregate of consecutive indeterminate sentences. Under Section 51 of the Kentucky Constitution, the entire statute is required to be re-enacted even though only a portion of the statute is amended.¹ The re-enactment and amendment of KRS 532.110(1)

¹See Board of Penitentiary Commissioners v. Spencer, 159 Ky. 255, 166 S.W. 1017 (1914).

do not evidence an intent by the Legislature to have the statute take priority over KRS 533.060(2).

Id. at 86. This Court went on to describe that the Legislature is aware of the interpretation of existing statutes and presumed to agree with that interpretation when new laws do not specifically change the prevailing view.²

The Supreme Court of Kentucky has clearly established that KRS 533.060(2) controls over KRS 532.110 in White v. Commonwealth, Ky., 5 S.W.3d 140 (1999), and Devore v. Commonwealth, Ky., 662 S.W.2d 829 (1984), cert. denied, 469 U.S. 836, 105 S. Ct. 132, 83 L. Ed. 2d 72 (1984). Additionally, this

Court in White v. Commonwealth, Ky. App., 32 S.W.3d 83 (2000), held the Legislature has not amended either KRS 533.060(2) or KRS 532.110 with clear language showing an intent to change or overrule the courts' interpretation of these statutes with regard to the consecutive sentence issue. White, 32 S.W.3d 86.

The Kentucky Supreme Court denied a motion for discretionary review of this Court's opinion in White v. Commonwealth, Ky. App., 32 S.W.3d 83 (2000), on November 15, 2000. Therefore, appellant's contention that the circuit court erred in applying KRS 533.060(2) as opposed to KRS 532.110 is without merit.

²See Butler v. Groce, Ky., 880 S.W.2d 547 (1994).

Having carefully reviewed the record, applicable statutes and case law, we adjudge that the circuit court did not err in ordering Chenault's six-year sentence run consecutive with the twenty-six year sentence. Therefore, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Lewter
Lexington, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler
Attorney General

J. Foster Cotthoff
Assistant Attorney General
Frankfort, Kentucky