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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001927-MR

CHRISTOPHER CHENAULT — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURENCE B. VANMETER, JUDGE
ACTION NO. 99-CR-00739

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: GUIDUGLI, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Appellant, Christopher Chenault, appeals from his one-year sentence for second-degree forgery. As Chenault was not entitled to custody credit for time spent at a halfway house as a condition of his probation, we affirm.

On July 13, 1999, Chenault was indicted on two counts of second-degree forgery and one count of giving an officer a false name. Chenault pled guilty to one count of second-degree forgery, with the Commonwealth recommending a one-year sentence and dismissal of the remaining two counts. On October 20, 1999, the court sentenced Chenault to one year's imprisonment, but probated the sentence for five years subject to conditions

including that Chenault serve 30 days with credit in the Fayette County Detention Center, be on intensive supervision, and submit to random drug tests.

On November 12, 1999, Probation and Parole Officer Larry MacQuown filed an affidavit to modify probation on grounds that Chenault had violated his curfew. Following a revocation hearing, on November 24, 1999 the court entered an order that Chenault continue on probation, subject to the condition that he serve nine days with credit in the Fayette County Detention Center. The court further ordered that all of the existing terms and conditions of Chenault's probation would remain in force. On January 6, 2000, MacQuown filed another affidavit to modify probation, on grounds of a curfew violation and failure to cooperate with the probation officer. A revocation hearing was held on January 7, 2000, and, on January 11, 2000, the court entered an order modifying Chenault's probation. The court ordered that Chenault continue on probation subject to the condition that he enroll in and complete the program at St. Andrews Halfway House, and that all of the existing terms and conditions of his probation would remain in force.

On March 8, 2000, MacQuown filed an affidavit to revoke probation, citing probation violations by Chenault of failure to cooperate with the probation officer, testing positive for marijuana, and failure to abide by the rules of St. Andrews House, for leaving St. Andrews on March 7, 2000 and failing to return as required. A probation revocation hearing was held on July 21, 2000. At the revocation hearing, Chenault contended

that he was entitled to custody credit for the time he spent at St. Andrews House. On July 25, 2000, the court entered an opinion and order finding that Chenault was not entitled to custody credit for the 59 days he spent at St. Andrews. Also on July 25, 2000, the court entered its final judgment and sentence revoking Chenault's probation, and finding Chenault entitled to 48 days custody credit for time spent at the Fayette County Detention Center. This appeal followed.

On appeal, Chenault contends that the trial court erred by denying custody credit for the 59 days he spent at St. Andrews. KRS 520.010(2) defines custody as "restraint by a public servant pursuant to a lawful arrest, detention, or an order of court for law enforcement purposes, but does not include supervision of probation or parole or constraint incidental to release on bail[.]" Although not directly on point, this Court has discussed what constitutes "custody" within the meaning of KRS 520.010(2). In Prewitt v. Wilkinson, Ky. App., 843 S.W.2d 335 (1992), the appellant argued that he should receive credit for time served while released on appeal bond. He argued that although he was not imprisoned, the appeal bond imposed conditions that were confining and restrictive to his liberty and freedom, and that these restrictions amounted to continuing in custody. Prewitt, 843 S.W.2d at 336. We concluded that the restrictions imposed upon the appellant did not constitute custody per KRS 520.010(2). In Bartrug v. Commonwealth, Ky. App., 582 S.W.2d 61 (1979), we held that the appellant's stay at a hospital prior to his arrest, where the hospital had agreed to

notify police when the appellant could be released, did not constitute custody within the meaning of KRS 520.010(2). We noted that the appellant was not confined by court order, that he could have left the hospital at any time, and had he done so, the Commonwealth could not have charged him with an escape offense under KRS Chapter 520. Further, in Cooper v. Commonwealth, Ky. App., 902 S.W.2d 833 (1995), we held that Court-ordered yard restriction in one's home while released on bail was not custody per KRS 520.010(2).

The record contains no information regarding the restrictions placed upon Chenault at St. Andrews, other than what appears from the March 8, 2000 affidavit and July 21, 2000 revocation hearing to be a requirement that residents sign out when they leave, and return by a specified time. At the revocation hearing, Chenault testified that he was working two jobs while he was at St. Andrews. Additionally, Chenault was not charged with escape for leaving and not returning to St. Andrews. Cooper, 902 S.W.2d at 835; Bartrug, 582 S.W.2d at 63. Further, the requirement that Chenault participate in the St. Andrews House program was imposed as an additional condition of probation as a consequence of his probation violations. KRS 533.020(1) allows the trial court to impose conditions on probation, and to modify or enlarge the conditions. The trial court's July 25, 2000 order states that the condition that Chenault go to St. Andrews was imposed incidental to continued supervision of probation. Further, the March 8, 2000 affidavit of Officer MacQuown indicates that the St. Andrews program was a "condition

of intensive supervision" of Chenault's probation. KRS 520.010(2) provides that custody "does not include supervision of probation or parole . . ." For the aforementioned reasons, we cannot say that the time Chenault spent at St. Andrews constituted "custody" within the meaning of KRS 520.120(2).

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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