

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001547-MR

JOHN REES, COMMISSIONER,  
DEPARTMENT OF CORRECTIONS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 06-CI-00404

TRACY GARRETT

APPELLEE

OPINION  
AFFIRMING

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BEFORE: STUMBO AND VANMETER, JUDGES; PAISLEY,<sup>1</sup> SENIOR JUDGE.

STUMBO, JUDGE: John Rees, Commissioner, Department of Corrections, appeals from an opinion and order of the Franklin Circuit Court arising from a petition for declaration of rights. The circuit court determined that the time spent by petitioner Tracy Garrett in the Halfway Back Program at the Roederer Correctional Complex should be credited as time served on a criminal sentence for drug offenses. Rees argues that Garrett's

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<sup>1</sup> Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

participation in the program was voluntary and therefore should not be credited to the sentence. For the reasons stated below, we affirm the order on appeal.

On May 16, 2005, Garrett tested positive for drug use and was charged with a parole violation. Rather than revoking his parole, Garrett's parole officer placed him in the Halfway Back drug rehabilitation program at the Roederer Correctional Complex ("RCC"). In order to participate in the program, Garrett had to sign an agreement consenting to abide by the terms of the program. Garrett, along with other participants at Halfway Back, lived with RCC inmates, were subjected to search and seizure, and when being transported were placed in handcuffs. Garrett completed the program and was released on November 3, 2005, and thereafter remained on parole.

Garrett soon tested positive for cocaine use, and on November 14, 2005, his parole officer initiated proceedings to revoke his parole. Garrett's parole was later revoked and he was returned to prison. In January, 2006 and March, 2006, Garrett sought an administrative determination that his time spent at Halfway Back would be credited toward time served. When the administrative proceedings failed to produce the desired result, he filed a petition in Franklin Circuit Court on April 7, 2006, seeking declaratory relief.

Upon considering the record, on July 11, 2006, the Franklin Circuit Court rendered an opinion and order granting the relief sought. The court found, in relevant part, that Garrett's participation in the Halfway Back program constituted incarceration, and that he was properly characterized as an inmate. Garrett, the court found, was

housed at RCC with other inmates and was treated like an inmate. As such, it concluded that his participation in the program was tantamount to incarceration, which entitled him to apply his time at the facility to his time served. This appeal followed.

The sole issue for our consideration is whether the circuit court erred in concluding that Garrett was an “inmate” and “reincarcerated” by virtue of his participation in the Halfway Back program, and that his participation entitles him to a credit of five months and nine days toward his sentence. Rees contends that Halfway Back is a treatment program and not incarceration. He maintains that the treatment was voluntary and that Garrett “could leave any time he wanted” before the completion of the program. Rees argues that because the treatment did not constitute incarceration, the circuit court erred in concluding that Garrett’s time spent in the program should count toward time served.

We have closely examined this issue and find no error. KRS 532.120(3) provides that, “[t]ime spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the court imposing sentence toward service of the maximum term of imprisonment.” The word “custody” is defined in KRS 520.010(2) as “. . . restraint by a public servant pursuant to a lawful arrest, detention, or an order of court for law enforcement purposes . . . .” The dispositive question, then, is whether the circuit court properly found that Garrett’s participation in the Halfway Back program constituted custody. We hold that it is.

Garrett's participation in the Halfway Back program was not voluntary, and he was not free to leave the RCC facility. Upon entry into the facility, Garrett was informed in writing that he would be arrested if he left the program. He was housed with RCC inmates, was subject to a deprivation of his constitutional rights, including warrantless search and seizure, and would be handcuffed and transported with inmates if he was required to leave the RCC property. Garrett wore a prison uniform, had a prison number, performed a prison job and was counted by prison guards.

In *Bartrug v. Commonwealth*, 582 S.W.2d 61 (Ky.App. 1979), a panel of this Court ruled that where there was no lawful arrest, nor detention, nor order of court, a request by a detective that he be notified when the defendant would be released from a hospital did not constitute "custody" within meaning of statute governing credit for time served. The facts at bar are distinguishable from *Bartrug*, though, in that Garrett was subject to the authority of both the parole officer and RCC staff by virtue of the court order defining the terms of his parole. And unlike the defendant in *Bartrug*, who had not yet been tried or convicted at the time of his hospitalization, Garrett had served time on a drug conviction and remained under the ongoing authority of the Commonwealth. That authority resulted in Garrett's confinement at RCC and participation in the Halfway Back program.

When looking to the totality of the circumstances, including Garrett's loss of certain constitutional rights, the threat of arrest for leaving the program, and the fact that Garrett lived with inmates, looked like an inmate and was treated like an inmate, we

affirm the circuit court's conclusion that Garrett was in custody at RCC and is entitled to the credit for time served arising therefrom.

For the foregoing reasons, we affirm the Franklin Circuit Court.

ALL CONCUR.

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