

RENDERED: AUGUST 24, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001697-MR

DAVID PAUL ADAMS

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE JULIA HYLTON ADAMS, JUDGE
ACTION NO. 04-CR-00025

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: KELLER, LAMBERT, AND STUMBO, JUDGES.

LAMBERT JUDGE: David Paul Adams appeals from the denial of Motion to Vacate Void Judgment. For the reasons set forth herein, we affirm the Clark Circuit Court.

Adams was sentenced to ten years imprisonment after pleading guilty to second degree burglary. On November 3, 2004, he filed a *pro se* Motion for Shock Probation. In that motion, he represented to the court that he was sorry for his crime and that he had "...acquired community custody due to his clear conduct, adjustability to staff,

and participation in Institutional Programs.” Based on Adams' representations, on November 16, 2004, the trial court granted Adams' request for shock probation.

On December 10, 2004, however, the trial court was notified by the Division of Probation and Parole that Adams had escaped from custody November 7, 2004. Upon learning of his escape, the trial court, on its own motion, set aside its November 16, 2004, Order granting shock probation. Adams was subsequently apprehended and returned to custody on January 16, 2005.

On June 27, 2006, Adams filed a Motion to Vacate Void Judgment Pursuant to C.R. 60.02(E). He argues that the court lost jurisdiction to alter, amend, or vacate its November 16, 2004, Order after ten days, and thus its December 13, 2004, Order was void. The trial court denied his motion, and this appeal followed.

Adams argues that the trial court lost its jurisdiction to revise an order on its own motion ten days after the Order was entered. *See* C.R. 52.20. We disagree.

Pursuant to KRS 439.265(1), a defendant may seek to have his sentence suspended via shock probation once he has served at least thirty days but less than 180 days from the date of his conviction and incarceration. It is clear, however, that this statutory scheme envisions and requires a defendant to be actively serving his sentence before *and during* the time he is seeking to have that sentence suspended. *See* KRS 439.255(3)(a). Furthermore, in *Potter v. Eli Lilly and Co.*, 926 S.W.2d 449, 454 (Ky. 1996), the Kentucky Supreme Court found that the courts of Kentucky possess certain

inherent powers to address actual fraud, bad faith conduct, abuse of judicial process, any deception of the court, and lack of candor to the court. The Court specifically stated,

We are persuaded that there are certain implied powers which are inherent in any Court of Justice in this State which arise from the very nature of their institution. Such authority is required because they are necessary to proper exercise of all other judicial authority. As such, these powers are governed not by statute or rule, but by the control vested in the court to manage its own affairs so as to achieve the orderly and expeditious, accurate and *truthful disposition* of causes and cases. ... It is obvious that along with *the inherent power to set aside or correct the judgment after the time permitted by rule has expired*, is the inherent power to conduct an independent investigation when there is a reasonable basis to believe that there is a possible lack of accuracy or truth in the original judgment. The Federal courts have also recognized this right of investigation so as to determine whether a judgment was obtained by fraud. *Universal Oil Co. v. Root Refining Co.*, 328 U.S. 575 (1946). ... We note with approval the language used by Justice Scalia in his dissent in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991); to the effect that some elements of inherent authority are so essential to the judicial authority that they are infeasible and among them is the ability of the Court to enter orders *protecting the integrity* of its own proceedings.

Id. at 453-454 (emphasis added).

In this case, the trial court was misled by Adams' *pro se* Motion to believe that he was not only eligible but also a good candidate for shock probation. We would be permitting a substantial fraud to be perpetrated on our judicial process if we allow a defendant to maintain shock probation granted through false representations to the court and untimely notification by the Department of Corrections. Thus we find that it was within the exercise of the court's inherent powers to set aside its November 16, 2004,

Order after time permitted by the rule had elapsed in order to “protect the integrity of its own proceedings.” *Id.* at 454.

Accordingly, we affirm the judgment of the Clark Circuit Court.

KELLER, JUDGE, CONCURS.

STUMBO, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

John Anthony Palombi
Assistant Public Advocate
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Wm. Robert Long, Jr.
Assistant Attorney General
Frankfort, Kentucky