

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-002416-MR

DESHAWN JOHNSON

APPELLANT

v.

APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN LYNN WILSON, JUDGE
ACTION NO. 06-CR-00192

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE AND MOORE, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

MOORE, JUDGE: DeShawn Johnson appeals the Henderson Circuit Court's order denying his motion to amend the court's prior order of contempt, pursuant to CR² 60.02, CR 60.03, and RCr³ 10.26. After a careful review of the record, we affirm

¹ Senior Judge David C. Buckingham, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

² Kentucky Rule(s) of Civil Procedure.

³ Kentucky Rule(s) of Criminal Procedure.

because the KRS⁴ 532.110(1)(a) requirement of concurrent sentencing does not apply to sentences for contempt.

Johnson was serving a fifteen-year felony sentence⁵ at the time he was transported to the Henderson Circuit Court to be a witness in another case. Once he arrived at the circuit court, Johnson refused to testify. The circuit court noted that Johnson did not refuse to testify based on any fear of further criminal prosecution, but merely for “personal reasons.”⁶ The court found that Johnson “was not asserting any valid Fifth Amendment privilege not to testify and that he was in direct contempt of court.” Therefore, the court entered an order of contempt, in which Johnson was sentenced to serve 180 days in jail, and that sentence was ordered to be served consecutively to any other sentence.

Approximately two years later, Johnson moved to amend the court’s order pursuant to CR 60.02, CR 60.03, and RCr 10.26. Specifically, Johnson asked the court to amend its prior order so that his sentence for contempt would be served concurrently with, rather than consecutively to, his other sentence. Johnson argued that KRS 532.110(1)(a) requires that a definite term of imprisonment and an indeterminate term of imprisonment are to be run concurrently with each other, so that both sentences are satisfied upon completion of the indeterminate term of imprisonment.

⁴ Kentucky Revised Statute(s).

⁵ It has not been specified for what crimes he was serving that sentence.

⁶ Those “personal reasons” have not been set forth in the written record or in Johnson’s brief.

The circuit court denied Johnson's motion, reasoning that sentences for contempt have been held to be exempt from the requirement specified in KRS 532.110(1)(a) concerning the concurrent running of sentences. Johnson now appeals, contending that the circuit court abused its discretion in denying his motion because KRS 532.110(1)(a) requires definite and indeterminate prison sentences to be run concurrently.

Kentucky Revised Statute 532.110 provides, in pertinent part:

(1) When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous sentence of probation or conditional discharge has been revoked, the multiple sentences shall run concurrently or consecutively as the court shall determine at the time of sentence, except that:

(a) A definite and an indeterminate term shall run concurrently and both sentences shall be satisfied by service of the indeterminate term[.]

However, in *Norton v. Commonwealth*, 37 S.W.3d 750, 755 (Ky. 2001), the Kentucky Supreme Court held that "the KRS 532.110(1)(a) requirement of concurrent sentencing [for definite and indeterminate terms] does not apply to terms imposed as punishment for contempt of court." Therefore, in the present case, Johnson's claim that his definite and indeterminate sentences should have been run concurrently pursuant to KRS 532.110(1)(a) lacks merit. Consequently, the circuit court did not err in denying Johnson's motion to amend his sentence.

Accordingly, the order of the Henderson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

DeShawn Johnson, *Pro se*
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BRIEF FOR APPELLEE:

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