

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001179-MR

RICK G. BURTON

APPELLANT

v.

APPEAL FROM MCLEAN CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 08-CI-00126

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; CLAYTON AND STUMBO, JUDGES.

COMBS, CHIEF JUDGE: Rick Burton appeals the dismissal of his petition for declaration of rights in McLean Circuit Court. After our review of the record and the pertinent law, we affirm.

Burton is currently in the custody of the Missouri Department of Corrections (MDOC) and is serving a sentence of fifty-seven years. He has been an inmate since 1991. In March 1992, Burton was brought to Kentucky for the

final disposition of charges pending against him in Daviess and McLean Counties. On March 17, 1992, Burton escaped while exiting the McLean County courthouse. He was captured thirty-two days later and was charged with first-degree burglary, kidnapping, first-degree robbery, and second-degree escape. The charges of burglary, kidnapping, and robbery were related to events that occurred after his escape but before his re-capture.

Burton pled guilty to all four charges on June 16, 1992. He received a sentence of incarceration of five years for the escape charge and seventeen years for each of the other charges. The court declared that the sentences were “to run concurrently with one another, but to run consecutively to any previous sentences imposed against the defendant in McLean Circuit Court of Kentucky or the Daviess Circuit Court of Kentucky.” Burton was then returned to Missouri.

In June 2008, Burton obtained a parole eligibility date of 2013 from the state of Missouri. On July 31, 2008, the McLean Circuit Court issued a detainer with MDOC stating that the seventeen-year sentence in Kentucky was “to run consecutively to the MDOC sentence.” Upon Burton’s release in Missouri, Kentucky seeks to assume custody of him. On September 10, 2008, Burton filed a petition for declaratory judgment requesting that the detainer be withdrawn. The court denied the motion on April 28, 2009. Burton timely filed a motion to alter, amend, or vacate the judgment, which was also denied. This appeal follows.

Burton argues that his Kentucky sentence was to be served concurrently with his Missouri sentence. If so, he claims that he satisfied that sentence early in 2009. We do not agree.

Burton first contends that the court improperly applied Kentucky Revised Statutes (KRS) 532.110 and 532.115 as they are currently written. Both statutes were amended in July 1992 – one month **after** Burton’s guilty plea and sentencing.

Burton correctly asserts that court should have applied the past version of the law. KRS 446.110 prohibits applying a law to an act that was committed before the effective date of the new law. Our courts have long applied KRS 446.110 by sentencing defendants according to the law **as it existed at the time** their crimes were committed. *Lawson v. Commonwealth*, 53 S.W.3d 534, 550 (Ky. 2001).

Burton contends that the trial court improperly administered the law. He cites the June 1992 version of KRS 532.110(2), which directed, “[i]f the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve.” It is true that Burton’s sentencing order did not address his Missouri sentence. However, as it existed in 1992, KRS 532.110(4) explicitly ordered that “the sentence imposed upon any person convicted of an escape or attempted escape offense shall run consecutively **with any other sentence** which the defendant must serve.” (Emphasis added.) Thus, KRS 532.110(4) is the more specific of the two

statutes by direct reference to the crime of escape and clearly governs in this case, encompassing not only any sentences previously imposed in Kentucky, but **any other sentence** to be served regardless of locale. It is unfortunate that the 1992 order of the McLean Circuit Court did not recite this reality with more clarity; *i.e.*, with direct reference to the requirement of consecutive sentencing rather than reference to any hypothetical but non-existent other terms imposed by the McLean or Daviess Circuit Courts.

Burton does not deny that he was convicted of escape in McLean Circuit Court. Therefore, his sentence for escape and the crimes he committed during his escape in Kentucky must be served consecutively to his sentence in Missouri.

We affirm the dismissal of Burton's petition for declarative rights by the McLean Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rick G. Burton, *pro se*
Farmington, Missouri

BRIEF FOR APPELLEE:

Wesley W. Duke
Department of Corrections
Frankfort, Kentucky