

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001052-MR

JEROME CRAWFORD

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN L. WILSON, JUDGE
ACTION NO. 00-CR-00054

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON AND CLAYTON, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Jerome L. Crawford appeals *pro se* from an order of the Henderson Circuit Court denying his motion for shock probation pursuant to KRS 439.265. 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 Kentucky Revised Statutes (KRS) 21.580.

At the conclusion of a trial, a jury found Crawford guilty of first-degree manslaughter. The trial court sentenced him to ten years' imprisonment. The final judgment was entered on November 1, 2000. Crawford filed an appeal of his conviction and sentence, but this Court later dismissed the appeal at Crawford's request. Additionally, on December 8, 2000, Crawford filed a motion for shock probation, which the trial court summarily denied.

In March 2002, Crawford filed a motion to correct judgment and sentence pursuant to Kentucky Rules of Civil Procedure (CR) 60.02, arguing that he had been incorrectly classified as a violent offender and required to serve 85% of his sentence before being eligible for parole. Crawford claimed that the domestic violence exception in KRS 439.3401 applied in his situation and that he should be eligible for parole after having served 20% of his sentence. The trial court denied the motion on the basis that Crawford did not fall within the parameters of KRS 439.3401. Crawford appealed the court's decision, but the appeal was subsequently dismissed due to Crawford's failure to file a brief.

On March 3, 2009, Crawford filed a "Motion to Suspend Further Execution of Sentence Pursuant to KRS 439.265," asking the court to place him on shock probation because he had served 85% of his sentence. The trial court denied the motion, finding that it was untimely under the language of KRS 439.265(1). This appeal followed.

KRS 439.265(1) states that a motion for shock probation may be

made:

not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution in which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced[.]

Moreover, “Kentucky Courts require strict compliance with the time limits imposed by KRS 439.265(1) for filing a motion for shock probation.” *Terhune v. Commonwealth*, 907 S.W.2d 779, 782 (Ky. App. 1995) (citing *Commonwealth ex rel. Molloy v. Meade*, 554 S.W.2d 399, 401 (Ky. App. 1977), and *Commonwealth ex rel. Hancock v. Melton*, 510 S.W.2d 250, 252 (Ky. App. 1974)). Although KRS 439.265(2) precludes review of the denial of shock probation, this Court has held that appellate review is proper to determine the trial court’s jurisdiction to grant shock probation, as opposed to a challenge on the merits. *See Melton*, 510 S.W.2d at 252.

On the question of jurisdiction, it is clear that the motion was not filed within the statutory time period and that any order entered by the trial court granting shock probation would have been outside of its jurisdiction. *See Melton*, 510 S.W.2d at 250, and *Schroering v. McKinney*, 906 S.W.2d 349 (Ky. 1995). The time limits of KRS 439.265(1) are determined from the date of one of two events: (1) when “the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been

sentenced,” *or* (2) when the defendant is “delivered to the keeper of the institution to which he has been sentenced[.]”

In this case, although the trial court used the incorrect date to commence the calculation of the time period under KRS 439.265(1) – the date on which the judgment became final rather than the date when Crawford was delivered to the keeper of the institution to which he was sentenced – Crawford’s motion for shock probation was untimely regardless of which date was used. Crawford did not file his present request for shock probation until 2009, years after the 180-day time limit had expired.

Furthermore, even if Crawford’s motion had been timely filed, the trial court should nonetheless have denied it. KRS 439.265(4) provides that “[i]f the defendant is a violent offender as defined in KRS 439.3401, the sentence shall not be probated under this section.” KRS 439.3401(1)(c) includes within the definition of a “violent offender” a person who has been convicted of “[a] Class B felony involving the death of the victim[.]” KRS 507.030 provides that first-degree manslaughter is a Class B felony. Thus, Crawford was not eligible for shock probation, and his motion was properly denied even assuming it had been timely filed.

Additionally, Crawford claims that his Fourteenth Amendment and Due Process rights were infringed upon because the trial court misunderstood the state of the law relating to the status and sentencing of criminal defendants. There is no indication in the record of such a misunderstanding. Additionally, Kentucky

courts have consistently held that there is no constitutional right to probation.

Land v. Commonwealth, 986 S.W.2d 440, 442 (Ky. 1999).

It also appears that Crawford is claiming infringement of his constitutional right to a fair hearing under the Fourteenth Amendment because the trial court denied his motion for shock probation without a hearing. However, KRS 439.265(2) clearly gives the trial court discretion on whether to conduct a hearing on a motion for shock probation. There was no error.

The order of the Henderson Circuit Court is affirmed.

ALL CONCUR.

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