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Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000642-MR

AMY ROBERTS; KORT THOMPSON;
LADONNA THOMPSON; AND
PHILIP PARKER

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 09-CI-01928

DERRICK MCGOWAN

APPELLEE

OPINION
REVERSING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; ACREE AND COMBS, JUDGES.

ACREE, JUDGE: In this case, we must decide whether a vocational certificate is equivalent to a technical education diploma, as set forth in Kentucky Revised Statute (KRS) 197.045(1). Finding no equivalency, we reverse.

In April 1991, McGowan was sentenced to thirty years in the Kentucky State Penitentiary (KSP) for first-degree rape and first-degree burglary. In August 1999, while incarcerated, McGowan achieved a Carpenter's Helper certificate and a Roofer certificate through the Kentucky Community and Technical College System (KCTCS). Several years later, McGowan filed a sentence calculation request with KSP's Offender Information Services office. McGowan asserted that his sentence should be re-calculated and reduced because he was entitled to Meritorious Good Time (MGT) credit¹ and Educational Good Time (EGT) credit pursuant to KRS 197.045. KSP denied McGowan's request.

On September 26, 2009, McGowan appealed to the Kentucky Department of Corrections' (KDOC) Offender Information Services Branch in Frankfort, Kentucky, as required by Kentucky Corrections Policies and Procedures (KCPP) 17.4. McGowan again asserted that he was entitled to MGT credit and EGT credit. KDOC also denied McGowan's request.

Subsequently, on November 13, 2009, McGowan filed a Petition for Writ of Habeas Corpus in Franklin Circuit Court. McGowan named as respondents various KDOC officials, including LaDonna H. Thompson, Commissioner of KDOC, as well as the KSP's Warden (collectively, respondents). McGowan asserted that respondents improperly denied him MGT credit and EGT credit and, but for respondents' denial, he would be entitled to immediate release from

¹ At the discretion of the Kentucky Department of Corrections, an inmate may receive "good-time" credit to reduce his or her sentence based on the inmate's good conduct. *Watkins v. Fannin*, 278 S.W.3d 637, 640-41 (Ky. App. 2009); KRS 197.045(3).

custody. As proof of his entitlement to EGT credit, McGowan attached to his petition his Carpenter's Helper and Roofer certificates. Respondents promptly filed a response and a motion to dismiss McGowan's petition on the grounds that the KDOC retains sole discretion to award MGT credit, and McGowan failed to prove that the vocational certificates he achieved were in fact technical education diplomas entitling him to EGT credit.

On March 22, 2010, the circuit court entered an Order granting McGowan's petition to the extent that he was entitled to 120 days of EGT credit and denying the remainder of McGowan's petition. The circuit court found that McGowan created a rebuttable presumption that he was entitled to 120 days of EGT credit for receiving two technical education diplomas, namely the Carpenter's Helper certificate and Roofer certificate. The circuit court then determined that the burden shifted to respondents to prove that McGowan's certificates did not qualify as technical education diplomas, as defined by the KDOC. The KDOC failed to do so, prompting the circuit court to find McGowan worthy of 120 days of EGT credit. Respondents promptly appealed to this Court. On appeal, respondents assert that the circuit court improperly ordered the KDOC to grant McGowan 120 days of EGT credit because McGowan failed to establish the Carpenter's Helper and Roofer certificates constitute technical education diplomas, as required by KRS 197.045(1). We agree.

The construction and application of a statute is a question of law subject to *de novo* review. *Bob Hook Chevrolet Isuzu, Inc. v. Com. Transp. Cabinet*, 983

S.W.2d 488, 490 (Ky. 1998); *Osborne v. Com.*, 185 S.W.3d 645, 648 (Ky. 2006).

Consequently, we owe no deference to the circuit court's interpretation of KRS 197.045(1). *Richardson v. Rees*, 283 S.W.3d 257, 263 (Ky. App. 2009).

KRS 197.045(1) states that:

[T]he [KDOC] shall provide an educational good time credit of sixty (60) days to any prisoner who successfully receives a graduate equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, a two (2) year or four (4) year certification in applied sciences, or who receives a *technical education diploma as provided and defined by the department*[.]²

KRS 197.045(1) (emphasis supplied). If an inmate has satisfied the requirements of KRS 197.045(1), the KDOC is required to grant him or her an EGT credit of sixty days. *Martin v. Chandler*, 122 S.W.3d 540, 543 (Ky. 2003) (recognizing that, provided the inmate has satisfied the program's requirements, EGT credit is mandatory while non-educational good time credit and MGT credit are discretionary). "The clear intent of the statute is to award EGT credits for certain technical achievements, secondary and higher education diplomas." *Richardson*, 283 S.W.3d at 263. Thus, the issue becomes whether McGowan's Roofer and Carpenter's Helper certificates constitute technical education diplomas, entitling him to EGT credit, as provided and defined by the KDOC.

² In 2010, the Kentucky legislature amended KRS 197.045(1) by, *inter alia*, increasing the amount of EGT credit an inmate may receive from sixty (60) days to ninety (90) days, effective July 15, 2010. 2010 Ky. Acts Ch. 107 § 3 (HB 564). "Kentucky law prohibits the amended version of a statute from being applied retroactively to events which occurred prior to the effective date of the amendment unless the amendment expressly provides for retroactive application." *Commonwealth v. Vinson*, 30 S.W.3d 162, 168 (Ky. 2000). Because KRS 197.045(1) does not expressly state it should apply retroactively, no prisoner who satisfied the statute's requirements before July 15, 2010 is entitled to more than sixty (60) days EGT credit for obtaining a technical education diploma.

The KDOC has promulgated KCPP 20.1 which sets forth the requirements to obtain EGT credits.

Educational Good Time shall only be available if the inmate earned a GED or other authorized achievement after July 13, 1990.

1. Program completion shall be verified by the Correctional School administrator and Educational Good Time shall be awarded under the following guidelines.

a. A recommendation for educational good time with an official GED transcript or a transcript documenting degree requirements including the conferred date shall be forwarded to the Warden and then to Central Office for final approval.

KCPP 20.1(II)(C)(1)(a). Despite the existence of these guidelines, the KDOC fails to precisely define the term “technical education diploma.” Consequently, we must interpret KRS 197.045(1) to ascertain what constitutes a technical education diploma.

In construing 197.045(1), our objective “is to give effect to the intent of the General Assembly, and we derive that intent, if at all possible, from the plain meaning of the language the General Assembly chose.” *Bowling v. Kentucky Dept. of Corrections*, 301 S.W.3d 478, 490-91 (Ky. 2009). “When a statute is plain and unambiguous, the language of the statute is to be given full effect as written.” *Mohammand v. Com.*, 202 S.W.3d 589, 590 (Ky. 2006). Accordingly, we must afford the statute’s words their common, ordinary, and everyday “meaning unless to do so would lead to an absurd or wholly unreasonable conclusion.” *Bailey v. Reeves*, 662 S.W.2d 832, 834 (Ky. 1984); *see also*

Commonwealth v. McBride, 281 S.W.3d 799, 803 (Ky. 2009) (“The plain meaning of the statute controls.”); KRS 446.080(4).

In broad terms, a diploma is defined as a “document that evidences or memorializes graduation from a school or society.” *Black’s Law Dictionary* DIPLOMA (9th ed. 2009); *see also Merriam-Webster Dictionary* 327 (10th ed. 2002) (defining diploma as “a document bearing record of graduation from, or of a degree conferred by, an educational institution”). In essence, a diploma evidences that a person has satisfied an institution’s education requirements to justify conferring a degree in a particular field of study.

In contrast, a certificate is a “document certifying the bearer’s status or authorization to act in a specified way.” *Black’s Law Dictionary* CERTIFICATE (9th ed. 2009); *see also Merriam-Webster Dictionary* 188 (10th ed. 2002). Thus, a certificate is awarded when a person has mastered a particular skill or sub-set of skills, perhaps as a stepping stone to satisfying a degree’s requirements, but has not fulfilled a complete educational curriculum and achieved a degree. We believe that, by using the phrase “technical education diploma,” the Kentucky legislature intended for inmates to complete an entire technical educational program, as opposed to a single vocational or technical class. Accordingly, unless the KDOC defines otherwise, a certificate is not the equivalent of a diploma.

There is an obvious benefit to educating prisoners so as to ensure increased job opportunities once they are released from institutions. Incentives such as . . . [educational] good time credit will encourage inmates to participate in educational programs. An inmate who

arrives at the institution without a high school diploma might subsequently earn a GED, achieve proficiency in a vocational trade, and earn a college degree, which would enhance his marketability in an increasingly shrinking job market.

Richardson, 283 S.W.3d at 263.

In the case *sub judice*, McGowan submitted two certificates, awarded by the KCTCS, which he claimed constitute technical education diplomas: a Carpenter's Helper certificate and a Roofer certificate. These documents indicate that McGowan has mastered the skills of a carpenter's helper and a roofer, and is entitled to documents reflecting his achievement. However, the certificates are not equivalent to technical education diplomas. There is no evidence that McGowan graduated from KCTCS with a diploma or degree in a technical education field. Instead, it appears McGowan completed courses in the areas carpentry and roofing. While we do not discount the value of mastering independent skills in technical and vocational fields, the common and ordinary usage of the word diploma prohibits us from concluding that McGowan's certificates are equivalent to technical education diplomas, as used in KRS 197.045(1). To conclude otherwise would thwart the underlying purpose of KRS 197.045(1) to provide inmates with a well-rounded education to enhance their job marketability, ease their return to society, and prevent recidivism.

The circuit court emphasized in its Order that the KDOC "is undeniably in the superlative position to provide proof of what technical programs it deems to be satisfactory and unsatisfactory, but it has chosen not to do so. This burden would

be incredibly minimal on the DOC; extremely helpful to the Court; and positively correlated to attaining manifest impartiality in the Commonwealth’s Justice System.” Circuit Court Order at 3. We agree with the circuit court that KDOC has failed to comply with the general assembly’s mandate that it establish what educational achievements constitute a technical education diploma justifying EGT credit. We are cognizant that each technical education program resulting in a diploma may demand substantively dissimilar educational requirements, classes, and training. However, it is incumbent upon the KDOC to identify the requirements necessary to achieve a technical education diploma in each field of study as to ensure objectivity, neutrality, and fairness in issuing EGT credit as required by the Kentucky legislature.

The Franklin Circuit Court’s Order granting in part McGowan’s Petition for Writ of Habeas Corpus is reversed.

TAYLOR, CHIEF JUDGE, CONCURS.

COMBS, JUDGE, DISSENTS BY SEPARATE OPINION.

COMBS, JUDGE, DISSENTING: I file this dissent from the majority opinion because of the reasoning of a case which it cites: *Richardson v. Rees*, 283 S.W.3d 257 (Ky. App. 2009). *Richardson* notes the mandatory language of KRS 197.045(1) requiring an award of good-time credit for an inmate who has earned “a technical education diploma” *Id.* at 263.

As the majority opinion acknowledges, there is no clear definition of “technical education diploma” – either in the statute or in the KDOC regulations.

McGowan earned not one but two vocational certificates under the auspices of the undeniably accredited KCTCS, whose own website provides as follows:

Certificates (12 to 36 credit hours)

Certificates are primarily offered in a *technical program* and can be earned in as little as one semester, depending on the program.

The primary purpose and features of certificate programs of study are to provide marketable, entry-level skills. Certificates qualify students to take *external licensure*, vendor-based, or skill standards examinations *in the field*. If standardized external exams are not available in the field of study, certificates prepare students *at skill levels expected of employees in an occupation* found in the local economy.

Certificates may contain general education courses emphasizing the skills identified in the SCANS [The Secretary's Commission on Achieving Necessary Skills] report that are critical to entry-level workforce success for persons prepared at the certificate level and associated with the diploma or associate degree program. (Bold in original; italics added.)

McGowan fulfilled those criteria/representations. Therefore, he has satisfied the reasoning of *Richardson*, which emphasized the desirability of educating prisoners so as to enhance their marketability upon returning to society after having “achieve[d] proficiency in a vocational trade” *Id* at 263.

I fear that the majority opinion in this case misconstrues and undermines the beneficent public policy purpose underlying KRS 197.045(1) as highlighted by our

analysis in *Richardson*. Therefore, I would affirm the well reasoned opinion of the Franklin Circuit Court awarding McGowan EGT credit.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Allison R. Brown
Frankfort, Kentucky