

RENDERED: DECEMBER 4, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000582-MR

JAMES COCHRAN

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE WILLIAM G. CLOUSE, JR., JUDGE
ACTION NO. 11-CR-00191

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING IN PART AND REMANDING

** ** * ** * **

BEFORE: CLAYTON, DIXON, AND KRAMER, JUDGES.

CLAYTON, JUDGE: James Cochran, *pro se*, appeals the Madison Circuit Court's January 2, 2014 order denying his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion. He contends that the trial court exceeded its authority in entering its judgment by imposing conditions on his conditional discharge and ordering an indeterminate amount of restitution. After careful consideration, we vacate that

portion of the judgment regarding conditions for conditional discharge and remand for a determination of the amount of restitution.

FACTUAL AND PROCEDURAL BACKGROUND

James Cochran was indicted on August 31, 2011, by the Madison County Grand Jury with one count of Sodomy in the First Degree and one count of Sexual Abuse in the First Degree. Mediation was held, and the parties reached a plea agreement.

Thereafter, Cochran pled guilty to one count of Sexual Abuse in the First Degree and received five years' imprisonment. In the trial court's final judgment, Cochran was classified as both a violent offender and a sexual offender. The judgment instructed that Cochran was subject to five years' conditional discharge under Kentucky Revised Statutes (KRS) 532.043 and also set forth the conditions of Cochran's conditional discharge. One condition was that Cochran pay restitution to his victim for any treatment that she might need as a result of the offense.

On September 3, 2013, Cochran filed an RCr 11.42 motion asking the trial court to vacate the judgment and sentence. He raised two claims of error. First, Cochran maintains that the trial court erred when it specified the conditions for his conditional discharge. He argued that at the sentencing when the trial court specified conditions for his probation, it violated the separation of powers doctrine. Second, Cochran also asserted that at the sentencing the trial court violated KRS

532.033(3) by now setting a definite amount of restitution. These grounds, according to Cochran, necessitate the vacating of his judgment and sentence.

The trial court denied Cochran's motion, holding that he had not stated grounds for relief. Apparently, Cochran did not receive notice of the trial court's denial of the motion until after the time for filing an appeal had passed. Therefore, he filed a motion for a belated appeal and a motion to proceed *in forma pauperis*, which our Court granted. This appeal followed.

ANALYSIS

Regarding Cochran's claim that the trial court erred in imposing conditions for his conditional discharge, we observe that any person convicted of a felony in KRS Chapter 510 is subject to a period of conditional discharge also referred to as "post-incarceration supervision." However, as explained in *Chames v. Commonwealth*, 405 S.W.3d 519, 526 (Ky. App. 2012), while KRS 532.043(1) requires a trial court to order a period of "postincarceration supervision," it is the Department of Corrections, rather than the trial court, which is tasked with setting the conditions for such supervision. KRS 532.043(3)(a).

Here, in its July 16, 2012 order, the trial court imposed conditions on Cochran's conditional discharge. In doing so, the trial court overstepped its bounds because under KRS 532.043, the Department of Corrections, a part of the Commonwealth's executive branch, is charged with imposing conditions. It is well-established law that the separation of powers doctrine precludes each of the three branches of government from encroaching upon the domain of the other two

branches. *Manns v. Commonwealth*, 80 S.W.3d 439, 443 (Ky. 2002). Therefore, the trial court acted without authority when it listed conditions that could be imposed upon conditional discharge.

Next, we address Cochran's claim that the trial court violated KRS 532.033(3) and (4) by not setting a definite amount of restitution but rather stating in the judgment and sentence of imprisonment that Cochran "[p]ay for his treatment and treatment his victim needs as a result of his offense." Again, we rely on *Chames*, which says "though the court is granted authority to impose restitution under KRS 532.033(3) and (4), the court must set a certain, specified amount to be paid to the victim." *Chames*, 405 S.W.3d at 526. In the case at bar, the trial court required Cochran to assume financial responsibility for any treatment required but did not set the amount to be paid. Without any specified amount of restitution, the trial court's order did not comply with the statute and was in error.

CONCLUSION

Accordingly, we vacate the portion of the Madison Circuit Court's judgment and sentence that sets conditions for Cochran's conditional discharge including an unspecified amount of restitution. Further, we remand for the trial court to set the amount of restitution.

ALL CONCUR.

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