

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-003040-DG

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA ISAAC, JUDGE
ACTION NO. 98-XX-00072

KEITH RAY STRICKER

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: DYCHE, GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE: The Commonwealth of Kentucky appeals from an opinion of the Fayette Circuit Court which reversed and remanded a sentence imposed by the Fayette District Court, Juvenile Division. We affirm.

The facts are uncontroverted. On June 1, 1998, Keith Ray Stricker (Stricker) was charged with stalking in the first degree, harassing communications and unlawful transaction with a minor in the third degree. Pursuant to an order of the Fayette District Court, Juvenile Division, Stricker was placed on home detention pending further proceedings of the Court and was ordered to have no contact with the victim. Shortly thereafter,

on June 5, 1998, Stricker was charged with contempt for violating the June 1, 1998 order. Approximately three weeks later, Stricker was again charged with contempt for a separate violation of the June 1, 1998 order.

On July 10, 1998, Stricker stipulated to both the original charges and the subsequent contempt charges. The Court sentenced Stricker to 210 days on the original charges and 180 days on the contempt charges to run consecutively for a total of 470 days. The sentence was suspended and Stricker was placed on probation.

On July 13, 1998, Stricker was again charged with unlawful transaction with a minor in the third degree. Upon stipulating to the charge, the Court found Stricker to be in contempt for violating his probation and re-imposed the sentences for the prior contempt charges which totaled 360 days.

Stricker appealed the sentence to the Fayette Circuit Court. He argued that the District Court committed reversible error by ordering confinement for a period in excess of 90 days because Kentucky Revised Statute (KRS) 635.060(5) limits the duration of such confinement to 90 days. The Circuit Court found Stricker's argument persuasive, and on or about November 10, 1998, entered an opinion reversing the sentencing order and remanding the matter to District Court. In so doing, the Circuit Court opined that KRS 635.060(5) bars the District Court from imposing a juvenile sentence of confinement in excess of 90 days for either the original charges or contempt orders arising therefrom, and that the statute does not so interfere with

judicial power as to defeat or materially impair the court's ability to enforce its orders.

Thereafter, the Commonwealth moved for discretionary review with this Court. The motion was granted and the matter ordered prosecuted as an appeal taken as a matter of right.

The Commonwealth now offers the same argument presented to the Circuit Court, i.e., that KRS 635.060(5) should not be interpreted as a legislative constraint on the sentencing court's authority to hold a party in contempt or to fix a sentence for said contempt. Alternatively, it maintains that if KRS 635.060(5) is such a constraint, it is unconstitutional. Stricker has not filed a responsive brief. Having closely studied the facts, the law and the Commonwealth's arguments, we cannot conclude that Circuit Court erred in reversing the sentence at issue, and accordingly must affirm.

KRS 635.060(5) states in relevant part that

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing, may:

. . . .

(5) If the child is sixteen (16) years of age or older, order that the child be confined in an approved secure juvenile detention facility, juvenile holding facility, or approved detention program as authorized by the Department of Juvenile Justice in accordance with KRS Chapter 15A for a period of time not to exceed ninety (90) days . . .

KRS 635.060.

KRS 635.055 addresses juvenile contempt. Its states that

No child who is found to be in contempt of court shall be committed as a public offender as a result of such finding, nor detained because of such finding in a facility other than a secure juvenile detention facility or juvenile holding facility.

KRS 635.060(5) clearly and unambiguously provides that a juvenile offender of age 16 years or older may be confined for a period not to exceed 90 days. The burden is on the Commonwealth to show that the Circuit Court erred in ruling that contempt sentences are governed by the 90-day limitation. We cannot conclude that it has met this burden for at least two reasons. First, we find it implausible that the legislature would establish a sentencing scheme under which a juvenile offender's sentence for the original offense would be limited to 90 days but where contempt charges arising therefrom could result in confinement in excess of 90 days. Second, and more important, we are bound to give effect to the literal statutory language where the language is not ambiguous and its application would not lead to an absurd result. Manning v. Kentucky Board of Dentistry, Ky. App., 657 S.W.2d 584 (1983). KRS 635.060(5) limits confinement to 90 days. It does not exclude contempt sentencing from this 90 day limitation, and we are not persuaded by the Commonwealth's argument that KRS 635.060(5) should be read to exclude said limitation.

A related issue raised by the Commonwealth and addressed by the Circuit Court is the degree to which the legislature may restrict the constitutional functions of the courts. With respect to the matter at bar, the question is whether KRS 635.060(5) represents an overreaching and therefore

unconstitutional infringement of the courts' authority to carry out its necessary functions. Citing Arnett v. Meade, Ky., 462 S.W.2d 940 (1971), the Circuit Court noted the general rule that legislative action is unconstitutional where it hampers judicial action or interferes with the discharge of its official functions. It opined that the ability of the juvenile court to impose 90 days in confinement for contempt carries sufficient punitive authority to allow the court to maintain and enforce its orders. As such, it concluded that KRS 635.060(5) does not materially hamper the exercise of the court's proper function.

We find no basis for tampering with this conclusion. The Commonwealth has offered little upon which we could reach a different result, and has not gone so far as to refute the strong presumption that the lower court's ruling was correct. City of Louisville, v. Allen, Ky., 385 S.W.2d 179 (1964).

Lastly, the Commonwealth argues that the punishment limits on the judiciary's contempt power are determined only by a contemnor's right to due process. Since Stricker received the full panoply of rights to which he was entitled, including the right to counsel and the right to a hearing, the Commonwealth maintains that the District Court should be availed of the opportunity to sentence Striker to whatever reasonable period of confinement it believes is appropriate in the exercise of its discretion. Again, this argument ignores the fact that KRS 635.060(5) expressly limits the period of confinement to 90 days. We do not find this argument compelling, and cannot rely on it as a basis for reversing the Circuit Court's opinion.

For the foregoing reasons, the opinion of Fayette Circuit Court is affirmed.

DYCHE, JUDGE, CONCURS.

SCHRODER, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

SCHRODER, JUDGE, DISSENTING. I reverse the circuit court because the 90-day limitation in the statute applies to "public offenses" and does not apply to or limit the court's powers as to contemptuous conduct. Keith typifies every juvenile judge's worst nightmare. Keith started out young with numerous status offenses¹ and graduated to public offenses.² He was placed on probation a number of times but continued to violate his probation. He committed more status, as well as public offenses. He treated home detention as a joke. Often he failed to appear at court-ordered appearances which led to numerous contempt charges. Keith even had the audacity or immaturity to inform the judge that he was not going to abide by any court order. Short sentences did nothing to abate Keith's conduct or attitude. Eventually, after again finding Keith in contempt, the court imposed previously suspended contempt sentences for a total of 360 days.

The majority agrees with the circuit court's opinion that the Kentucky Unified Juvenile Code, KRS 635.060(5), limits the punishment a juvenile may receive to 90 days of incarceration. I disagree. The Unified Juvenile Code (KRS 600,

¹Status offenses are acts which if committed by an adult would not be a crime. KRS 600.020(52).

²Public offenses are acts, excluding contempt, which if committed by an adult would be a crime. KRS 600.020(41).

et seq.) divides juvenile delinquents into three classes: status offenders;³ public offenders;⁴ and youthful offenders.⁵ Each class has its own rules. Status offenders include runaways, truants, and incorrigibles.⁶ Status offenders cannot be placed in a secure juvenile detention or holding facility as a means of punishment, "except following a finding that he is in contempt of court".⁷ Public offenders include juveniles who have committed violations, misdemeanors, and some felonies.⁸ The court has numerous options in dealing with juveniles found to be public offenders,⁹ including "confined in an approved secure juvenile detention facility, juvenile holding facility, or approved detention program . . . for a period . . . not to exceed ninety (90) days. . . ." ¹⁰ Public offenders can be found in contempt of court, and there are specific statutes¹¹ which make it clear that the finding of contempt does not in itself elevate the juvenile to a "public offender". If found in contempt, public offenders can be incarcerated in "a secure juvenile detention facility or

³KRS 630.000, et seq.

⁴KRS 635.000, et seq.

⁵KRS 640.000, et seq.

⁶KRS 630.020.

⁷KRS 630.070.

⁸KRS 635.020; KRS 600.020(41).

⁹KRS 635.060; KRS 635.090; KRS 635.085.

¹⁰Id., Section 5.

¹¹KRS 635.055; KRS 600.020(41).

juvenile holding facility.”¹² Youthful offenders include juveniles charged with more serious felonies and/or have prior records and/or the community needs to be protected from them, etc.¹³ Youthful offenders convicted in circuit court are initially subject to the same procedures and duration of sentences as adult offenders,¹⁴ with differences in the facility for incarceration.¹⁵ No one is questioning a trial court’s contempt powers over adults, it is a given.

The legislative scheme in classifying juvenile delinquents according to the severity of the offense corresponds to the length of incarceration allowed as punishment for criminal acts. Each of the three classifications specifically excludes limitations on the court’s contempt powers except as to the type of facility for the incarceration. If that isn’t enough to show that the General Assembly did not intend to limit the court’s contempt powers, then KRS 610.010 should leave no doubt as section 8 states:

Nothing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court.

The court’s contempt powers are inherent, necessary powers for a “tribunal, derived from its very constitution,

¹²Id.

¹³KRS 640.010; KRS 635.025; KRS 635.020; KRS 600.020(56).

¹⁴KRS 640.030.

¹⁵Id.

without any express statutory aid."¹⁶ The judicial power of contempt is outside the purview of the legislature¹⁷ and is part of the separation of powers doctrine in Section 28 of our Kentucky Constitution.¹⁸

It is not possible for any judicial tribunal to fulfill its functions without power to preserve decorum and to enforce its orders. Hence, it has been recognized from ancient days that the process of contempt is an essential and inherent attribute of the jurisdiction of every court of record, and this judicial power may not be confined by limitations of statute, except in respect of punishment.¹⁹

Juvenile courts are special courts of limited jurisdiction but are not deprived of any "of the inherent and essential right and power to consider and dispose of direct contempt."²⁰

There are two types of contempt, civil and criminal.²¹ Civil contempt allows incarceration to compel an individual to obey a court order, and he is entitled to immediate release upon his obedience.²² Criminal contempt allows incarceration to punish for disruption of the court or for failure to obey an

¹⁶Melton v. Commonwealth, 160 Ky. 642, 170 S.W. 37, 40 (1914), quoting Bishop's Criminal Law. See this case for an excellent review of a court's contempt powers.

¹⁷Smothers v. Lewis, Ky., 672 S.W.2d 62 (1984).

¹⁸Commonwealth v. Willis, Ky., 716 S.W.2d 224 (1986); Arnett v. Meade, Ky., 462 S.W.2d 940 (1971).

¹⁹Young v. Knight, Ky., 329 S.W.2d 195, 199 (1959).

²⁰Id. at 200.

²¹Gordon v. Commonwealth, 141 Ky. 461, 133 S.W. 206 (1911).

²²Campbell v. Schroering, Ky. App., 763 S.W.2d 145 (1988).

order of the court.²³ Criminal contempt can be subdivided into direct, committed in open court, or indirect, committed outside the courtroom.²⁴ Where the contempt or misbehavior by a person is in open court, or so near thereto as to obstruct the administration of justice, the court may summarily punish for the contempt.²⁵ It requires no fact finding because all elements of the offense are personally known to the court.²⁶ Indirect criminal contempt requires a due process hearing before it can be punished. The court charging the person with contempt must conduct a hearing to show the defendant had knowledge of a valid court order and that he intentionally violated it.²⁷

Currently there are no statutory limitations on a court's contempt powers.²⁸ Nevertheless, the United States Supreme Court has held that the Sixth Amendment right to a jury trial applies to criminal contempt proceedings in the cases of "serious" crimes.²⁹ Our Kentucky Supreme Court defined "serious" contempt crimes in Kentucky to be where the fine for contempt

²³Commonwealth v. Burge, Ky., 947 S.W.2d 805, 808 (1997), cert. denied, _____ U.S. _____, 118 S. Ct. 422, 139 L. Ed. 2d 323 (1997).

²⁴Id.

²⁵Melton, 170 S.W. at 40.

²⁶Burge, 947 S.W.2d at 808, citing In re Terry, 128 U.S. 289, 9 S. Ct. 77, 32 L. Ed. 405 (1888).

²⁷Butts v. Commonwealth, Ky., 953 S.W.2d 943, 944 (1997); Burge, 947 S.W.2d at 808, citing Cooke v. United States, 267 U.S. 517, 45 S. Ct. 390, 69 L. Ed. 767 (1925).

²⁸Miller v. Vettiner, Ky., 481 S.W.2d 32, 34 (1972); Arnett v. Meade, Ky., 462 S.W.2d 940 (1971).

²⁹Bloom v. State of Illinois, 391 U.S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968).

exceeds \$500.00 or the incarceration for contempt exceeds six months.³⁰ The Court went on to say that whenever a civil or criminal contempt "requires the resolution of a factual issue the trial court may itself resolve that issue upon the basis of a hearing in which the alleged offender is afforded a fair opportunity to present a defense, but may not in such a case inflict a fine greater than \$500.00 and incarceration for more than six months except upon the unanimous verdict of a jury finding the offender guilty beyond a reasonable doubt."³¹ The Court did not require a jury trial for "direct criminal contempt", that is, committed in open court where the facts are personally known to the court. The Court did caution, however, that such a court should be sure the facts are shown by a proper record.³²

In 1977, the Kentucky Supreme Court modified the Miller test as to "serious" punishment for contempt. It retained the six-month incarceration limitation but dropped the \$500.00 fine guide. Instead of anything over a \$500.00 fine being considered serious, the court must now decide "whether the fine is 'petty' or 'serious' and that will be determined within the context of the risk and possible deprivation faced by a particular contemnor."³³ The case being considered upheld a \$10,000.00 fine

³⁰Miller, 481 S.W.2d at 35.

³¹Id.

³²Id.

³³International Association Of Firefighters, Local 526, AFL-CIO v. Lexington-Fayette Urban County Government, Ky., 555 S.W.2d 258, 260 (1977).

to a union with over 300 members to be considered petty and therefore there was no right to a jury trial.³⁴

The International Association Of Firefighters, Local 526, AFL-CIO case also pointed out a significant procedural step where a jury is used. "[W]here a jury is required to resolve the factual issue of contempt, the jury only finds guilt or innocence. Upon a finding of guilt, the penalty is imposed by the court."³⁵ Thus, a court needs to assess the allegation prior to the hearing on indirect criminal contempt, to see whether or not the contemptuous conduct is serious enough to merit a jury trial.

Applying these principles to the case before us, Keith was held in contempt in two previous cases and received a 180-day sentence on each contempt charge which the court probated. At this later hearing for a possible probation revocation, the court was dealing with sentences of less than six months each so no jury was required. The judge had the discretion to run the sentences consecutively or concurrently. The only limitation was that the total sentence could not exceed one year because contempts are considered misdemeanors³⁶ and a sentencing on multiple misdemeanors cannot exceed one year.³⁷

³⁴Id.

³⁵Id.

³⁶Melton, 160 Ky. 642, 170 S.W. at 37 and Gordon v. Commonwealth, 141 Ky. 461, 133 S.W. 206 (1911).

³⁷KRS 532.110(1)(b).

The judgment of the Fayette Circuit Court should be reversed and the sentence of the district court should be reinstated.

BRIEF FOR APPELLANT:

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