

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002197-MR

LINVILLE JACKSON LAMB

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE WILLIAM T. JENNINGS, JUDGE
ACTION NO. 98-CR-00049

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, GUIDUGLI AND KNOFF, JUDGES.

GUIDUGLI, JUDGE. Linville Jackson Lamb ("Lamb") appeals from a denial of his petition for writ of prohibition relating to a denial of good time credits. We affirm.

In September, 1998, Lamb was indicted by the Clark County Grand Jury on four counts of first-degree sexual abuse. Lamb entered a plea of guilty, and was sentenced to a total of four years in prison. Final judgment and sentence was rendered on December 30, 1998.

On June 22, 2000, Lamb filed a pro se petition for a writ of prohibition. He alleged therein that the Department of Corrections was improperly withholding good time credits and

instead requiring him to serve 85% of his sentence as a sexual offender. As a basis for the petition, he maintained that the sexual offender law went into effect after the date of his conviction. The petition was summarily denied via an order rendered September 7, 2000, and this appeal followed.

Lamb now argues, through counsel, that the trial court improperly denied his petition for relief. He notes that KRS 197.045 makes good time credit contingent upon the convictee's completion of a sex offender treatment program, and concedes that the application of KRS 197.045 does not violate constitutional provisions against ex post facto law.¹ See Lozier v. Commonwealth, Ky. App., 32 S.W.3d 511 (2000). Instead, Lamb argues that he was " . . . denied good time credits and improperly subject to an extended prison term only because of his status as a sexual offender, not because of a failure to complete a treatment program." As such, he argues that a summary denial of his writ was improper.

We may easily dispose of Lamb's appeal. Setting aside the Commonwealth argument that Lamb now improperly characterizes his petition for writ of prohibition as a petition for a declaratory judgment, we believe there is no distinction between the Lozier-style ex post facto argument noted above, and the argument which Lamb now asserts. The dispositive point is that under KRS 197.045, good time credits earned by Lamb are not forfeited but rather are delayed until after completion of a

¹Lamb has not completed a sexual offender program, despite the fact that completion of such a program was a term of his sentence.

treatment program. Lamb has not completed such a program, and accordingly he may not receive any accumulated good time credits. Lozier is controlling and, as such, the circuit court acted properly in dismissing Lamb's petition.

For the foregoing reasons, we affirm the order of the Clark Circuit Court.

ALL CONCUR.

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