

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000602-MR

CYRUS PETTUS

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 01-CI-00504

LARRY CHANDLER, WARDEN AND
RECORDS DEPARTMENT OF THE
KENTUCKY CORRECTIONS CABINET

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: EMBERTON, CHIEF JUDGE, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Cyrus Pettus appeals, pro se, from an order of the Oldham Circuit Court dismissing his petition for declaration of rights. Having concluded that KRS 197.045(4) does not operate as an unconstitutional ex post facto law as applied to Pettus, we affirm.

On December 1, 1998, Pettus pled guilty in the Shelby Circuit Court to three counts of third-degree rape and two counts of third-degree sodomy, pursuant to offenses committed in 1997. On June 11, 1999, the court entered its judgment and sentence on plea of guilty, sentencing Pettus to a total of 10 years' imprisonment for the aforementioned offenses.

On August 24, 2001, Pettus filed a petition for declaration of rights in the Oldham Circuit Court, contending that the application of KRS 197.045(4) to him is unconstitutional as an ex post facto law, because his crimes were committed prior to the July 15, 1998, enactment of the statute. On February 5, 2002, the Oldham Circuit Court entered an order dismissing Pettus's petition. This appeal followed.

KRS 197.045(4) provides that although a sex offender may earn good time, the good time shall not be credited to the sex offender's sentence until he has successfully completed the sex offender treatment program. KRS 197.045(4) became effective on July 15, 1998.

We conclude that the case of Lozier v. Commonwealth, Ky. App., 32 S.W.3d 511 (2000), is controlling of the present case. In Lozier, the appellant similarly committed a sex offense prior to the effective date of KRS 197.045(4), but pled guilty to the offense after the statute's effective date. In concluding that the statute did not operate as an unconstitutional ex post facto law as applied to the appellant, we stated:

Two elements must be present for a law to be considered ex post facto: "(1) 'it must apply to events occurring before its enactment,' and (2) 'it must disadvantage the offender.'" Lattimore v. Corrections Cabinet, Ky. App., 790 S.W.2d 238, 239 (1990); (quoting Weaver [v. Graham], 450 U.S. 24, 29, 101 S. Ct. 960, 67 L. Ed. 2d 17 (1981)).

. . . .

[A]pplication of KRS 197.045(4) does not impose any additional punishment upon Lozier. A person convicted and sentenced to a state penal institution may receive credit on his or her sentence for good behavior or for

other meritorious conduct. KRS 197.045(1). Since Lozier was convicted and sentenced after the effective date of the statute, it does not deprive her of any previously earned credits. In addition, KRS 197.045(4) does not deprive Lozier of the opportunity to earn good time credit and to qualify for early parole. Rather, KRS 197.045(4) merely defers the effective date of any good time credit which Lozier may earn in prison until she has successfully completed a sex offender treatment program. Once she completes the program, her accrued good time credit will be credited against her sentence. Consequently, we find no indication that Lozier will be disadvantaged by the application of KRS 197.045(4).

Lozier, 32 S.W.3d at 514.

In the present case, although Pettus committed the sex offenses at issue in 1997, he was convicted and sentenced after the effective date of KRS 197.045(4). Accordingly, per this court's holding in Lozier, the application of KRS 197.045(4) to Pettus is constitutional.

The order of the Oldham Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Cyrus Pettus, pro se
LaGrange, Kentucky

BRIEF FOR APPELLEE, LARRY
CHANDLER, WARDEN:

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