

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000195-MR

WILLIAM D. WOOLUM

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 01-CI-00188

VERTNER L. TAYLOR;
PATTI TREAT;
COMMONWEALTH STATE OF KENTUCKY,
DEPARTMENT OF CORRECTIONS

APPELLEES

OPINION
VACATING AND REMANDING
** **

BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

MILLER, JUDGE: William D. Woolum brings this *pro se* appeal from an order of the Lyon Circuit Court entered January 4, 2002. We vacate and remand.

For a number of years, Woolum has been in custody of the Department of Corrections (Department). He is serving a life sentence. It appears he would soon be eligible for parole. In 1989, he was administratively transferred to a facility in the State of Florida pursuant to an agreement between Kentucky and

Florida under the Interstate Corrections Compact. Kentucky Revised Statutes (KRS) 196.610 - .620. In accordance with the agreement, Woolum was at all pertinent times under the jurisdiction of Kentucky. He was merely being "housed" in the Florida facility as a convenience to the Department. It is not suggested he was transferred either for security or disciplinary reasons. Woolum alleges the transfer was involuntary.

While incarcerated in Florida, Woolum was required to do certain work. He alleges he was not paid for this work, as he would have been had he performed the same work while incarcerated in Kentucky.¹

Woolum filed the instant declaratory action under KRS 418.040. He seeks a determination of his entitlement to compensation for the work performed while housed in Florida. He directs our attention to a number of measures which he believes support his claim for compensation.

KRS 197.110(4) requires the Department to adopt regulations governing the pay of prisoners. Toward these ends, Kentucky Corrections Policies and Procedures 19.3 Paragraph V provides:

¹There is some indication that Florida rewards prisoners for work performed by a method known as "gain-time." It is not clear whether Woolum benefited from this program, but it is clear that upon his return to Kentucky he was awarded "good time" under our system. Presumptively, some of this good time accrued during his incarceration in Florida.

V. POLICY

It is the policy of Corrections to compensate individual inmates for work performance. Individual jobs shall be assigned through the appropriate classification process. The work experience, needs of the inmate, and proper maintenance of the institution shall be factors considered in assignments. (Emphasis added).

Our Interstate Corrections Compact, KRS 196.610 Article III(a)3, provides:

- (a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for: (Emphasis added).

. . . .

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom. (Emphasis added).

ARTICLE IV(a), (c), and (h) provide:

- (a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party

state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state. (Emphasis added).

. . . .

- (c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state . . . [and] the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III. (Emphasis added).

. . . .

- (h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state. (Emphasis added).

Section 15(a) of Interstate Corrections Compact between this Commonwealth and the State of Florida provides:

15. Training or Employment

- (a). Inmates from the sending state shall be afforded the opportunity and shall be required to participate in programs of occupational training and industrial or other work on the same basis as inmates of the receiving state. Compensation in connection with any such participation (whether payment, incentive, or for any other therapeutic or rehabilitative reason) shall be paid to inmates of the sending state on the same basis as to inmates of the receiving state. Any such inmates of the sending state shall be subject to the regular work discipline imposed upon other inmate participants in the particular program. However, nothing contained herein shall be construed to permit or require any inmate of a sending state to participate in any training, industrial or other work contrary to the laws of the sending state. (Emphasis added).

Woolum's position is that the policy of Florida which denied him compensation for work performed does not comport with Kentucky law authorizing payment for prison labor. Thus, he argues Kentucky should be required to compensate him for his labor while incarcerated in Florida. In short, he maintains he was not paid for work performed while in the Florida facility as he could have been had he performed the same work while imprisoned in Kentucky.

Having considered the foregoing measures, the circuit court dismissed Woolum's complaint. The court reasoned that the measures do not "establish an absolute right of prisoners to work

or to receive pay for any work performed, nor does it specify a procedure or system for paying prisoners that work outside of the Commonwealth in another prison."

The circuit court also noted that Kentucky received no benefit from Woolum's labor, the implication being that if any entity owed for his services it was the state of Florida.²

Finally, the circuit court noted that Florida had, by some means, perhaps compensated the appellant inasmuch as his personal account showed a balance.³

Prisoners have only a limited range of civil liberties. For example, they have no right to particular housing. See Mahoney v. Carter, Ky., 938 S.W.2d 575 (1997). Moreover, a prisoner is not constitutionally protected from out-of-state transfer. See Olim v. Wakinekona, 461 U.S. 238, 103 S. Ct. 1741, 75 L. Ed. 2d 813 (1983).

Woolum, moreover, makes no complaint about being housed in Florida. Rather, his complaint is that because he was housed in Florida and performed labor there he was entitled to payment. We therefore turn our attention to this issue.

Having considered the appropriate provisions and relevant law, we, of course, agree that prisoners have no absolute right to the payment for work performed.⁴ The practice

²Undoubtedly, Kentucky receives some benefit from the transfer of prisoners, otherwise, the practice would not exist.

³Woolum contends his account balance represents money received from settlement of an injury claim.

⁴It has been held that a prisoner assigned to work is not an employee of the state. See Tackett v. LaGrange Penitentiary,
(continued...)

of paying prisoners for work performed is a dispensation of legislative grace and a gratuity that may be withdrawn or withheld at anytime by the legislature. See State Board of Charities and Corrections v. Hays, 190 Ky. 147, 227 S.W. 282 (1920).

Woolum contends his right to compensation is a property right, which cannot be impaired under the due process clause of the United States Constitution. We disagree. The Constitution does not create property rights, but merely protects those rights that have been created under state law or stem from an independent source. See Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). As heretofore indicated, the law of this Commonwealth creates no right to compensation, which the United States Constitution could be called upon to protect.

Notwithstanding the foregoing, our inquiry does not end here. It is clear from reading the foregoing measures that Kentucky has established a firm policy of paying prisoners a modest sum for certain work performed. This begs the question of whether prisoners who perform work in out-of-state facilities, to which they are ultimately transferred pursuant to the Interstate Corrections Compact, may be legally deprived of compensation. We think not.

While prisoners do not have a full array of constitutional protections, they are entitled to fundamental

⁴(...continued)
Ky., 524 S.W.2d 468 (1975).

fairness in their treatment. Cf. Byerly v. Ashley, Ky. App., 825 S.W.2d 286 (1991). It appears to us that the arbitrary transfer of prisoners to a state which does not pay for prison labor not only offends the clear policy of this Commonwealth, but is repugnant to the arbitrary power provision set forth in Section 2 of our Constitution.

Because Woolum was at all times during his incarceration in Florida still under the jurisdiction of this Commonwealth, we think fair and equal treatment requires that he be afforded the same remuneration for work performed as prisoners remaining within the confines of this state.

The concept of fair and equal treatment under the law was described in Commonwealth v. Frost, 295 Ky. 137, 172 S.W.2d 905, 909 (1943) as follows:

However, in the exercise of every power emanating from the people there enters the constitutional command of equal protection of the laws, which means equal rights for all similarly situated. Therefore, administrative officers must execute the law committed to them fairly and honestly and treat everyone alike according to the standards and rules of action prescribed. Where there is a failure in this respect and it extends beyond the rudimentary requirements of fair play, it enters the realm of unreasonable and arbitrary action, from which the courts will save the citizen touched by it. (Emphasis added).

We have considered this appeal upon an issue of law only, i.e., whether Woolum, arbitrarily transferred to Florida pursuant to the Interstate Corrections Compact agreement, may be lawfully deprived of compensation for his labor there. Having answered the question in the negative and concluding that the

record is insufficient to determine how much labor, if any, was performed, and whether or not Woolum was, in fact, paid to some extent, we are of the opinion this matter should be returned to the circuit court for consideration of all relevant issues so as to determine his entitlement, if any.

For the foregoing reasons, the order of the Lyon Circuit Court is vacated and the cause remanded for proceedings consistent with this opinion.

BARBER, JUDGE, CONCURS.

BUCKINGHAM, JUDGE, CONCURS AND FURNISHES SEPARATE OPINION.

BUCKINGHAM, JUDGE, CONCURRING BY SEPARATE OPINION. I concur with the majority opinion but desire to state my views separately. The majority opinion holds that the concept of fair and equal treatment under the law requires that Woolum be paid the same remuneration for work performed as prisoners remaining within the confines of this state. However, although the majority opinion cites the relevant statutes, it apparently does not rely on those statutes as the basis of its opinion.

I conclude that Woolum's rights to remuneration for the work he performed in Florida is governed by Article IV, section (h), of the Interstate Corrections Compact. If Woolum would have been entitled to payment for the work had he been confined in Kentucky, then I conclude this statute requires that he be paid although the work performed was while he was a prisoner in Florida. Furthermore, as Article IV, section (a), states that the receiving state is the agent for the sending state, it

appears to me that Kentucky rather than Florida would be responsible for the payment.

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