

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-000462-MR
AND
NO. 2001-CA-000688-MR

JA-RON S. TEAGUE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 98-CR-002453

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING BOTH APPEALS

** ** * * *

BEFORE: BAKER, GUIDUGLI AND PAISLEY, JUDGES.

GUIDUGLI, JUDGE. Ja-ron Shawn Teague (hereinafter "Teague") has appealed from two sets of rulings by the Jefferson Circuit Court: 1) the February 1, 2001, order denying his motion for recalculation of time served and the order denying his motion for reconsideration of that order,¹ and 2) the February 8, 2001, order denying his motion to interpret KRS 439.179(1)(2) and declaration of rights, and from the order denying his motion for

¹ Appeal No. 2001-CA-000462-MR.

reconsideration of that order.² This Court consolidated the matters for purposes of appeal. Having reviewed Teague's two briefs and supplemental brief, the Commonwealth's consolidated brief, and the record, we find no error in any of the circuit court's rulings. Thus, we affirm.

On September 30, 1998, the Jefferson County Grand Jury returned indictments against Teague on charges of Escape II³ and for being a First Degree Persistent Felony Offender.⁴ The charges arose from Teague's July 9, 1998, escape from the River City Corrections detention facility while on work release. At the time he escaped, Teague was serving a 365-day sentence for a misdemeanor charge, which had been imposed on September 19, 1997. Throughout the course of the escape proceedings, Teague argued that he was improperly allowed to participate in work release as his commitment order had a "no release" notation on it. Because he never should have been permitted to leave on work release, he asserted, he could not be punished for escaping.

Nevertheless, during an August 20, 1999, pre-trial conference, Teague decided to accept the Commonwealth's offer on a plea of guilty. The Commonwealth recommended a five-year sentence on the Escape II charge, enhanced to ten years due to

² Appeal No. 2001-CA-000688-MR.

³ KRS 520.030.

⁴ KRS 532.080.

the PFO I charge, and also recommended probation on the strict condition of compliance with the circuit court's orders and admission to the Salvation Army Adult Rehabilitation Center.⁵ If the circuit court decided not to grant probation, the Commonwealth reserved the right to amend the PFO I charge to a PFO II charge, and recommend a five-year sentence to serve. The circuit court accepted Teague's guilty plea,⁶ and after he agreed to waive separate sentencing, continued with the sentencing hearing.

The circuit court chose to accept the Commonwealth's recommendation to grant probation, and sentenced Teague to an enhanced sentence of ten years, but withheld rendition of the sentence and placed him on intensive probation with Probation and Parole for five years on the condition that he strictly comply with several requirements. These requirements included that he commit no other offenses; that he have no alcohol or drugs; that he enroll in, stay in, and complete the Salvation Army treatment program; that he continue counseling and treatment after completion of the program during his probationary period; that he abide by the court's orders; and that he keep all of his appointments with his probation officer.

⁵ Teague vehemently asserted throughout the proceedings that he needed substance abuse treatment due to his admitted drug addiction problem, and had himself contacted the Salvation Army regarding entrance to the rehabilitation program.

⁶ Teague provided the circuit court with his address during the guilty plea portion of the hearing.

Furthermore, the circuit court directed him to report immediately to the Salvation Army upon his release. The circuit court placed a telephone call to the Salvation Army office to ensure that a bed was still available and to inform the office that Teague was being sent there that day. The Salvation Army indicated that they would wait for him to arrive, and that if he had not arrived by 6:00 p.m., the sheriff would be contacted. The written judgment was not entered until the following Monday, August 23, 1999.

Teague was released by corrections officials shortly after 6:00 p.m. on the evening of Friday, August 20, 1999, but he unfortunately failed to report to the Salvation Army. Instead, he was arrested at 11:30 p.m. that night by the Jefferson County Police Department for shoplifting, possession of a controlled substance (cocaine), possession of drug paraphernalia, and resisting arrest.⁷ The probation office reported the arrest to the circuit court, and the Salvation Army also reported that Teague failed to report as directed. Teague was apparently released shortly after his August 20, 1999, arrest, because the circuit court issued a bench warrant on August 26, 1999. He was again arrested on August 29, 1999, on the bench warrant and for shoplifting at J.C. Penny. The

⁷ Teague claimed that he was released too late for him to arrive at the Salvation Army before it closed at 6:00 p.m. and that he had nowhere else to go as he was homeless. We note, however, that Teague provided the circuit court with an address earlier that day in open court.

Commonwealth immediately moved to revoke Teague's probation on the grounds that he failed to report as directed, failed to follow the court ordered conditions of probation, and failed to report a new arrest. However, the revocation hearing was continued several times to allow for resolution of his new district court charges, including a competency evaluation by KCPC. On January 21, 2000, the parties appeared regarding the motion to revoke. By that time, Teague had been found competent by the district court on the basis of the KCPC evaluation, and the district court charges had been disposed of by agreement with the Commonwealth. As a part of the district court agreement, Teague agreed to stipulate to the allegations in the motion to revoke, to not object to revocation of his probation, and to not request shock probation. The circuit court revoked Teague's probation and remanded him for service of the ten-year sentence imposed on August 20, 1999. A written order memorializing the bench ruling was entered the same day.

Following his incarceration, Teague filed several pro se motions with the circuit court, all of which were denied. On January 12, 2001, he filed a motion for other credit time pursuant to KRS 532.120, requesting credit for time served from August 28, 1997, through August 20, 1999. The circuit court requested a recalculation of jail time credit from Probation and Parole, and received a response by letter dated January 19,

2001. Probation and Parole Officer Debbie Flach indicated that Teague had been accurately credited with 527 days. Therefore, the circuit court denied the motion by order entered February 1, 2001, and denied Teague's motion for reconsideration on February 9, 2001. It is from these two orders that Teague took the appeal docketed as appeal No. 2001-CA-000462-MR.

On February 2, 2001, Teague filed a pro se motion to interpret KRS 439.179(1)(2)/declaration of rights. In this motion, Teague was apparently seeking a dismissal or modification of his Escape II sentence because he was released for work in contravention to an order directing that he not be released while serving the sentence for his misdemeanor conviction. Additionally, he was requesting that the circuit court interpret a statute dealing with the release of misdemeanants. The circuit court denied the motion on February 8, 2001, and denied the motion to reconsider that ruling on February 22, 2001. It is from these rulings that Teague filed the appeal docketed as appeal No. 2001-CA-000688-MR.

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At the outset, we note that the circuit court record contains a pleading from Teague styled "Motion to Withdraw Jail Credit Time Appeal," filed on March 14, 2001, after the notice of appeal was filed in this case. In the motion, Teague indicated that he no longer wanted to address the issue of jail

time credit. The circuit court, properly, did not rule on this motion, but the motion was not forwarded to the Court of Appeals. Although we could dismiss the appeal based upon this motion, we note that Teague perfected his appeal by filing a brief in this matter. Therefore, we shall address the merits of the appeal.

It appears that Teague's argument is that he is entitled to a credit from August 28, 1997, when he began serving his sentence on the misdemeanor conviction, until August 20, 1999, when the circuit court entered the Escape II conviction. On the other hand, the Commonwealth argues that the circuit court properly denied Teague's motion in that he was correctly credited with 527 days following the revocation of his probation on January 21, 2000.

We agree with the Commonwealth that Teague was not entitled to any more credit than the circuit court had already allowed him. He clearly is not entitled to credit back to August 28, 1997, on the escape charge because he did not commit that offense until July 9, 1998. Furthermore, the 527 days of credit to which Teague was entitled on January 21, 2000, covers the time during which he was in custody (after serving out his misdemeanor sentence) for the escape charge and upon his re-arrest for probation violations and subsequent revocation, adjusted for the time he was not in custody for whatever reason.

The circuit court did not commit any error or abuse its discretion in denying Teague's motion for additional jail time credit or his motion for reconsideration.

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In this appeal, Teague continues with his long-standing argument that his Escape II conviction should be dismissed because he never should have been placed on work release, based upon the "no release" notation on his misdemeanor commitment order, and because he was entrapped by this action. He also requests that this Court "settle the existing controversy over who grants misdemeanor work, etc, releases, pursuant to KRS 439.179 and RCr 3.18 and interpret and certify the law on KRS 439.179(1)(2)(3)(4) and RCr 3.18." The Commonwealth, again, argues that the circuit court properly denied this motion, and that Teague cannot legitimately shift the blame for his actions to corrections officials. Furthermore, the Commonwealth asserts that in making his arguments, Teague ignores the fact that he entered a guilty plea to the Escape II charge, and therefore waived his right to present any defense.

We agree with the Commonwealth's argument that Teague is precluded from raising any defenses regarding the circumstances of the escape charge due to his decision to enter a guilty plea. As set out in the Commonwealth's brief, it is

well established that "the effect of a guilty plea is to waive all defenses except that the indictment charged no offense." Porter v. Commonwealth, Ky., 841 S.W.2d 166, 167 (1992).

Likewise, we need not address Teague's request that we interpret and certify the law regarding KRS 439.179. The statute has no relations to this felony case, and any issue should have been raised, if at all, in the district court presiding over the misdemeanor conviction. Furthermore, only the Kentucky Supreme Court has the authority to certify the law. CR 76.37.

The circuit court did not abuse its discretion in denying either Teague's motion for interpretation/declaration of rights or his motion for reconsideration.

CONCLUSION

For the foregoing reasons, the decisions of the Jefferson Circuit Court are affirmed.

ALL CONCUR.

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