

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000829-MR

ANTHONY MCCLISTER

APPELLANT

v.

APPEAL FROM ADAIR CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NOS. 08-CR-00016 & 09-CR-00059

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

TAYLOR, CHIEF JUDGE: Anthony McClister brings this appeal from a January 14, 2010, final judgment of the Adair Circuit Court sentencing him to eighteen-years' imprisonment and ordering him to pay \$4,050 in restitution. We affirm.

McClister was indicted upon the offenses of second-degree burglary, theft by unlawful taking over \$300, and with being a first-degree persistent felony (PFO) offender. While McClister was jailed awaiting trial, he physically struck a

jail employee, threatened jail employees, and repeatedly kicked the door to his cell. Consequently, McClister was indicted upon the offenses of third-degree assault, third-degree criminal mischief, third-degree terroristic threatening, and for being a first-degree PFO.

McClister and the Commonwealth entered into a plea agreement as to both indictments. Thereunder, McClister pleaded guilty to second-degree burglary, theft by unlawful taking over \$300, first-degree criminal mischief, third-degree assault, third-degree criminal mischief, third-degree terroristic threatening, and with being a second-degree PFO. In exchange, McClister was sentenced to a total of eighteen-years' imprisonment. In a separate restitution order, McClister was also ordered to pay \$4,050 in restitution. This appeal follows.

McClister argues that the trial court abused its discretion by ordering him to pay restitution. Specifically, McClister claims that the trial court failed to comply with Kentucky Revised Statutes (KRS) 532.033 as the restitution order did not set forth the amount and frequency of restitution payments. In reliance upon *Rollins v. Commonwealth*, 294 S.W.3d 462 (Ky. App. 2009), McClister maintains that the trial court's restitution order is invalid for such oversight. We disagree.

KRS 532.033 provides:

When a judge orders restitution, the judge shall:

- (1) Order the restitution to be paid to a specific person or organization through the circuit clerk, who shall disburse the moneys as ordered by the court;

- (2) Be responsible for overseeing the collection of restitution;
- (3) Set the amount of restitution to be paid;
- (4) Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum;
- (5) Monitor the payment of the restitution to assure that payment is being made;
- (6) If restitution is not being paid as ordered, hold a hearing to determine why the restitution is not being paid;
- (7) If the restitution is not being paid and no good reason exists therefor, institute sanctions against the defendant; and
- (8) Not release the defendant from probation supervision until restitution has been paid in full and all other aspects of the probation order have been successfully completed.

KRS 532.033(4) requires the trial court to either specify the amounts and frequency of restitution payments or set forth a lump sum amount of restitution.

In its restitution order, the circuit court specifically held:

Restitution in the total amount of Four Thousand, Fifty Dollars (\$4,050.00), shall be paid by the Defendant, Anthony G. McClister (this restitution is a joint and several responsibility with Jason McClister). The Defendant shall pay this amount within a reasonable time following his release from custody, and this amount shall be paid through the Adair Circuit Clerk's Office, unless otherwise ordered by this Court and/or the Kentucky Parole Board. This restitution shall be distributed by the Adair Circuit Clerk to Chris Downs and Kim Downs, 136 Creekport Drive, Columbia, KY 42728.

From the above order, it is clear that the trial court ordered McClister to pay \$4,050 restitution within a reasonable time. We interpret the restitution order as requiring McClister to pay the lump sum amount of \$4,050 and to pay said lump sum amount within a “reasonable time.” As mandated by KRS 532.033(4), the restitution order set forth both the amount to be paid (\$4,050) and set forth the time period for such payment (reasonable time). Consequently, we cannot say that the restitution order contravenes KRS 532.033.

Additionally, we do not view *Rollins*, 294 S.W.3d 462, as dispositive. Therein, the circuit court failed to set forth the exact amount of restitution but rather left the restitution amount open for future determination. On appeal, the Court of Appeals held that the circuit court’s restitution order violated KRS 532.033(4) by not setting forth a specific restitution amount and was invalid. *Id.* By contrast, in our case, the restitution order set forth the amount of restitution and a time period for payment, thus complying with KRS 532.033.

Upon the whole, we are of the opinion that the restitution order is valid.

For the foregoing reasons, the final judgment of the Adair Circuit Court is affirmed.

ALL CONCUR.

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