

RENDERED: OCTOBER 26, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000835-MR

LAWRENCE DAVIDSON

APPELLANT

v. APPEAL FROM CRITTENDEN CIRCUIT COURT
HONORABLE C. RENÉ WILLIAMS, JUDGE
ACTION NO. 10-CR-00057

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, CHIEF JUDGE; NICKELL AND STUMBO, JUDGES.

STUMBO, JUDGE: Lawrence Davidson appeals from the April 14, 2011

judgment and sentence of the Crittenden Circuit Court. We affirm.

In 2008, Davis was serving a twelve month probated sentence, to be served thirty days on weekends, when he failed to return to the Crittenden County Detention Center. Davis was consequently indicted for an escape charge and

subsequently filed a motion to dismiss. Therein, Davidson argued that any failure to report did not fit within the statutory definition of escape. Instead, Davidson argued that a failure to report could only amount to a probation violation.

Davidson's motion was denied. On February 10, 2011, Davidson entered a conditional guilty plea to one charge of escape in the second degree and reserved the right to appeal the trial court's denial of his motion to dismiss. The guilty plea was accepted in the trial court's judgment and sentence, entered on April 4, 2011. This appeal followed.

Davidson's argument on appeal is the same as was presented to the trial court: failure to report as part of a probated sentence does not constitute the offense of escape in the second degree. We disagree.

"A person is guilty of escape in the second degree when he escapes from a detention facility or, being charged with or convicted of a felony, he escapes from custody." Kentucky Revised Statutes (KRS) 520.030. In *Land v. Commonwealth*, 366 S.W.3d 9 (Ky. App. 2012), this Court recently held that failure to return to a detention facility, following a temporary leave granted for a limited time, met the definition of second-degree escape. In support of its holding, the Court relied on the statutory definitions of "escape" and "custody" found in KRS 520.010. *Id.* at 10. Like the case presently before us, the defendant in *Land* failed to return to custody while serving out a weekend jail sentence and is therefore controlling. Accordingly, we find no error with the trial court's denial of Davidson's motion to dismiss.

For the foregoing reasons, the April 14, 2011 judgment and sentence of the Crittenden Circuit Court is affirmed.

ALL CONCUR.

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