

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001908-MR

PATRICK MCGLENNEN

APPELLANT

v. APPEAL FROM OWEN CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 11-CR-00027

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

** ** * * * * *

BEFORE: COMBS, STUMBO AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Patrick McGlennen entered a conditional guilty plea in the Owen Circuit Court to second-degree escape. He argues that the circuit court erred when it denied his motion to dismiss the escape indictment and when it imposed courts costs and fines.¹

¹ Although it is unclear from the record, McGlennen appears to argue for reversal of an additional fine imposed in a Carroll Circuit Court case. Although the same judge presided over

After his indictment by the Owen County Grand Jury, McGlennen filed a motion to dismiss the escape indictment. He argued that because the officers who arrested him lacked jurisdiction to make the arrest, he was not in legal custody when he escaped from their custody. An evidentiary hearing was held and the following facts developed.

Arrest warrants were issued in Carroll County for McGlennen and two co-defendants for theft of property valued at approximately \$2,700. On May 2, 2011, Carroll County Sheriff Jamie Kinman and Carroll County Deputy Sheriff James T. Shaw traveled to Owen County where McGlennen and a co-defendant resided to execute the arrest warrants. Deputy Shaw contacted the Owen County Sheriff's department for assistance.

Owen County Deputy Sheriff Larry Osborne testified and confirmed that on May 2, 2011, he received a call from Deputy Shaw regarding the warrants and that he initially agreed to meet the officers and execute the warrants.

However, he was called to another part of the county while en route to the scene. Because there was no other officer at the sheriff's department available to execute the warrants, Deputy Osborne called the Carroll County officers and requested they execute the warrants.

The Carroll County officers located McGlennen and placed him under arrest. While at the scene, McGlennen escaped from the officers' vehicle resulting in the escape charge.

this case and the Carroll Circuit Court case, the Carroll Circuit Court case is not before this Court.

During the hearing, it was stipulated that there was no agreement between Owen County and Carroll County that would permit officers to make arrests in either county under the Interlocal Cooperation Act. Kentucky Revised Statutes (KRS) 65.255. The issue presented to the trial court was whether Carroll County officers had jurisdiction to arrest McGlennen pursuant to KRS 431.007(1), which states:

A peace officer certified pursuant to KRS 15.380 to 15.404, who is directly employed as a police officer by a Kentucky city, county, or urban-county government and whose department meets the requirements of KRS 15.440 and a sheriff, or deputy sheriff who has been certified pursuant to KRS 15.380 to 15.404, who is officially requested by a law enforcement agency in another county in Kentucky to assist in any matter within the jurisdiction of the requesting agency shall possess, while responding to and for the duration of the matter for which the request was made, the same powers of arrest in the requesting county as he possesses in the county in which he is a police officer.

The trial court found that Deputy Osborne requested that the Carroll County Sheriff's Office assist the Owen County Sheriff's Department by executing the warrant on McGlennen and, therefore, at the time of his escape, he was in lawful custody.

McGlennen points out that “[i]t is no offense to depart from custody for which there was no authority.” *Hopkins v Commonwealth*, 301 S.W.2d 586, 589 (Ky. 1957). However, it is not clear under Kentucky law whether a court has authority to dismiss an indictment because the arresting officer acted outside his

lawful jurisdiction. In *Commonwealth v. Bishop*, 245 S.W.3d 733, 735 (Ky. 2008), the Court declined to address the issue and decided the appeal on its merits. Likewise, because KRS 431.007 permitted McGlennan's arrest by the Carroll County officers pursuant to a valid felony arrest warrant, we decline to address whether the circuit court had authority to dismiss the indictment.

Deputy Osborne testified that he requested the Carroll County officers to execute the arrest warrant. Despite the undisputed testimony, McGlennen suggests that Deputy Osborne's oral request was not an official request as that phrase is used in KRS 431.007. We disagree.

We set forth our rules of statutory construction.

The interpretation of a statute is a matter of law. The primary purpose of judicial construction is to carry out the intent of the legislature. In construing a statute, the courts must consider the intended purpose of the statute and the mischief intended to be remedied. A court may not interpret a statute at variance with its stated language. The first principle of statutory construction is to use the plain meaning of the words used in the statute. Statutes must be given a literal interpretation unless they are ambiguous and if the words are not ambiguous, no statutory construction is required. We lend words of a statute their normal, ordinary, everyday meaning. We are not at liberty to add or subtract from the legislative enactment or discover meanings not reasonably ascertainable from the language used. The courts should reject a construction that is unreasonable and absurd, in preference for one that is reasonable, rational, sensible and intelligent.

Monumental Life Ins. Co. v. Department of Revenue, 294 S.W.3d 10, 19 (Ky.App. 2008) (internal quotation marks, citations, and brackets omitted). Applying the

stated rules to KRS 431.007, we conclude that the circuit court properly denied McGlennen's motion.

The request by Deputy Osborne was sufficient under KRS 431.007 to provide the Carroll County officers with the same powers of arrest in Owen County as they would possess in Carroll County to arrest McGlennen. Deputy Osborne was acting pursuant to his authority as an agent of the Sheriff's Department. Moreover, there is no requirement in the statute that the request be in writing. Because police officers most often request assistance in emergency circumstances, such a requirement would render the statute meaningless. McGlennen was lawfully arrested by the Carroll County officers pursuant to KRS 431.007 and properly charged with escape in the second degree.

McGlennen's final argument is that because he was determined indigent by the circuit court, costs could not be imposed. Until recently, it was palpable error to impose court costs and fines on indigent defendants. *See Edmonson v. Commonwealth*, 725 S.W.2d 595 (Ky. 1987). However, in *Maynes v. Commonwealth*, 361 S.W.3d 922 (Ky. 2012), the Kentucky Supreme Court deviated from that rule.

Pursuant to *Maynes*, KRS 23A.205(2) controls. *Id.* at 933. The statute provides that a trial court has discretion to impose court costs on an indigent defendant "unless the court finds that the defendant is a poor person as defined by KRS 453.190(2), and that he or she is unable to pay court costs and will be unable to pay the court costs in the foreseeable future." KRS 23A.205(2). A poor person

is defined in KRS 453.190(2) as “a person who is unable to pay the costs and fees of the proceeding in which he is involved without depriving himself or his dependents of the necessities of life, including food, shelter, or clothing.” The *Maynes* Court pointed out that the “poor person” standard in KRS 23A.205 is distinguishable from the “needy person” standard in KRS 31.100. It noted that KRS 23A.205(2) requires the court to consider both the defendant’s ability to pay at present and in “the foreseeable future.” *Maynes*, 361 S.W.3d at 933.

Although McGlennen was determined “needy” and appointed a public defender, there was evidence in the record that he will be able to pay court costs in the foreseeable future. He is serving only a three and one-half year sentence for a Class D felony. Additionally, during the sentencing hearing, he indicated that he worked construction and, after his release, anticipated returning to that work. Furthermore, the court ordered that payment on the costs would not begin until ninety days after his release and payable on a \$50 per month schedule. Under the circumstances, we conclude that the imposition of court costs was proper. We now address the \$1,000 fine imposed by the Owen Circuit Court.

Maynes did not alter the prohibition in KRS 534.040(4) prohibiting the imposition of fines upon any person determined by the court to be indigent. Therefore, the \$1,000 fine imposed in the Owen Circuit Court’s final judgment and sentence of imprisonment was erroneous.

The order of the Owen Circuit Court is affirmed in part, reversed in part and this case remanded for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT:

Erin Hoffman Yang
Assistant Public Advocate
Dept. of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

John Paul Varo
Assistant Attorney General
Frankfort, Kentucky