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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000512-MR

KENNETH GENE KOKINDA

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 11-CR-01094

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, CLAYTON, AND TAYLOR, JUDGES.

CAPERTON, JUDGE: Appellant, Kenneth Gene Kokinda, appeals from a conditional guilty plea to charges of flagrant nonsupport and being a second-degree persistent felony offender (PFO). Kokinda argues that the flagrant nonsupport statute, Kentucky Revised Statutes (KRS) 530.050, violates Section 18 of the

Kentucky Constitution and the 14th Amendment of the United States Constitution as applied to him. We affirm.

The Fayette County Grand Jury indicted Kokinda on one count of flagrant nonsupport and one count of first-degree PFO. The total child support arrearage amounted to \$107,424.16. Kokinda filed a motion to declare the flagrant nonsupport statute, KRS 530.050, unconstitutional as applied to him. An offer of Kokinda's estate to satisfy his creditors accompanied the motion to declare KRS 530.050 unconstitutional. The Fayette Circuit Court denied the motion to declare KRS 530.050 unconstitutional. Subsequently, Kokinda entered a conditional guilty plea to one count of flagrant nonsupport and second-degree PFO for a total sentence of seven years of imprisonment.

On February 21, 2012, the trial court entered judgment and sentenced Kokinda to the recommended seven years of imprisonment probated for five years upon various conditions including the payment of arrears in the amount of \$107,424.16. This appeal followed.

Kokinda argues that KRS 530.050 violates Section 18 of the Kentucky Constitution because it imposes imprisonment for debt. We disagree.

Section 18 of the Kentucky Constitution states:

The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law.

In *Waddell v. Commonwealth*, 893 S.W.2d 376, 381 (Ky. App. 1995), this Court held that KRS 530.050 did not violate Section 18 because “[t]he crime does

not seek to impose a punishment for a debt, but... to redress the intentional financial abandonment of one's legal responsibilities." Kokinda cites to *Lewis v. Lewis*, 875 S.W.2d 862 (Ky. 1993), and *Mattingly v. Mattingly*, 164 S.W.3d 518 (Ky. App. 2005), in support of his argument that Kentucky law recognizes child-support obligations as debts. However, these cases are inapplicable to the present situation because *Lewis* dealt with civil contempt of court and *Mattingly* dealt with child-support obligations in the bankruptcy context. In *Waddell*, this Court held that KRS 530.050 does not violate Section 18. Therefore, under *Waddell*, we conclude that KRS 530.050 does not violate Section 18 as applied to Kokinda.

Next, Kokinda argues that KRS 530.050 violates the Fourteenth Amendment of the United States Constitution because KRS 530.050 provides for imprisonment without a finding as to whether the defendant made a good-faith effort to pay child support but was unable to pay. We disagree.

In *Commonwealth v. Marshall*, 345 S.W.3d 822, 824 (Ky. 2011), the Supreme Court of Kentucky held:

The principle of due process [requires] that the trial court must make clear findings on the record specifying the evidence relied upon and the reasons for revoking probation. This requirement specifically includes findings about whether the defendant made sufficient bona fide efforts to make payments. The trial court's findings do not necessarily have to be in writing. These due process requirements apply regardless of whether child support payment conditions were imposed by the trial court or whether the defendant agreed to these conditions as part of a plea agreement. In cases in which the defendant agreed to child support payment conditions under a plea agreement, the trial court may properly

focus its inquiry on post-plea financial changes without revisiting whether the defendant was able to make payments at the time the guilty plea was entered.

Marshall applies to the revocation of probation and post-plea financial conditions.

Id. Requiring a trial court to conduct a *Marshall* inquiry at the time a guilty plea is entered would serve no purpose because, “a defendant pleading guilty to flagrant nonsupport admits not making payments despite ability to do so.” *Id.* at 829. Any due process concerns in this regard are alleviated by Kokinda’s plea of guilty and, thereby, admitting that he failed to make payments despite his ability to do so. We conclude that there was no violation of due process.

Accordingly, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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