

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-002012-DG

JORDAN SEARCY

APPELLANT

ON DISCRETIONARY REVIEW FROM FAYETTE CIRCUIT COURT
v. HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NOS. 17-XX-00028 AND 17-XX-00029

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; MAZE AND NICKELL, JUDGES.

NICKELL, JUDGE: On discretionary review, Jordan Searcy seeks reversal of an appellate opinion of the Fayette Circuit Court affirming the Fayette District Court's judgment sentencing him to serve ninety days' incarceration for contempt of court related to his blatant violation of the district court's prior order requiring him to have no contact with his victim while he was incarcerated. Upon careful

consideration, we conclude discretionary review was improvidently granted and the matter must be dismissed.

Following a domestic dispute with his girlfriend, Nilah Walker, Searcy was charged with harassment, violation of a Kentucky DVO/EPO,¹ and theft by unlawful taking over \$500.00. Searcy ultimately entered a negotiated guilty plea to the charges with the theft charge being amended to a misdemeanor. The Commonwealth recommended a sentence of ninety days' incarceration. Prior to accepting the plea, the district court indicated Searcy would be subject to a no contact order with Walker while he served his sentence if he went forward with his guilty plea. Searcy agreed and was sentenced accordingly.

Upon being returned to the jail, and less than one hour after entering his plea, Searcy contacted Walker via telephone. Over the next four days, he initiated nearly fifty telephone calls to Walker, prompting the Commonwealth to file a motion seeking to hold him in contempt. One week after entering his plea, Searcy appeared before the trial court and stipulated his contumacious behavior. The trial court sentenced him to an additional forty-eight days in jail—one day for each phone call. As he was leaving the courtroom, Searcy uttered a profane phrase

¹ Domestic Violence Order/Emergency Protective Order.

directed at the trial court, for which he received an additional ten days for direct contempt.

Undeterred, Searcy continued contacting Walker in contravention of the no contact order. In a July 21, 2017, motion for contempt, the Commonwealth alleged Searcy had “made 244 calls to Walker, by way of four different phone numbers for a total of 3,483.12 minutes (58.05 hours).” Searcy again stipulated to violating the trial court’s order, but upon learning the trial court intended to impose more jail time, trial counsel began discussing the maximum penalties available for misdemeanor convictions and collateral consequences which could attach thereto. The trial court inquired whether he was asserting it did not have authority to hold Searcy in contempt to which counsel replied, “I’m saying that, that is effectively what I’m saying.” The trial court disagreed with defense counsel and proceeded to sentence Searcy to an additional ninety days in jail for his contempt.

Searcy timely appealed to the Fayette Circuit Court, asserting for the first time the district court was without authority to enter the “no contact” order in addition to incarcerating him. He claimed the original order was void and therefore, he could not be held in contempt for violating its terms. The circuit court disagreed and affirmed the district court, concluding the “no contact” order was separate and apart from the judgment imposing jail time and such orders are typical in domestic violence matters. Further, the circuit court held courts have

inherent authority to punish persons who willfully and flagrantly violate orders.

Searcy timely filed a motion seeking discretionary review in this Court.

Without having the benefit of the entire record and based on the assertions set forth by the parties, a panel of this Court granted discretionary review. Upon further consideration of the briefs and now having the benefit of the record for review, especially the recorded proceedings, we conclude discretionary review was improvidently granted in this matter as the district court was never given an opportunity to rule on the question presented to the circuit court—and now this Court—for resolution. The argument actually presented to the trial court was whether it had authority to hold Searcy in contempt. The propriety of the “no contact” order was never challenged although Searcy had multiple opportunities to do so.

“Our jurisprudence will not permit an appellant to feed one kettle of fish to the trial judge and another to the appellate court. An appellant preserves for appellate review only those issues fairly brought to the attention of the trial court.” *Owens v. Commonwealth*, 512 S.W.3d 1, 15 (Ky. App. 2017) (citations, internal quotation marks, and alterations omitted). “It goes without saying that errors to be considered for appellate review must be precisely preserved and identified in the lower court.” *Elwell v. Stone*, 799 S.W.2d 46, 48 (Ky. App. 1990) (citation omitted). “[P]rocedural requirements generally do not exist for the mere sake of

form and style. They are lights and buoys to mark the channels of safe passage and assure an expeditious voyage to the right destination. Their importance simply cannot be disdained or denigrated.” *Brown v. Commonwealth*, 551 S.W.2d 557, 559 (Ky. 1977). As the district court was not presented the challenge now raised, nor given the opportunity to rule thereon, we shall not consider the issue.

Error correction is not the purpose of discretionary review. Special reasons must exist such as novel questions of law and the interpretation of statutes, matters of general public interest and the administration of justice, or clearly erroneous judgments resulting in manifest injustice. 7 Kurt A. Philipps, David V. Kramer and David W. Burleigh, *Kentucky Practice-Rules of Civil Procedure Annotated*, Rule 76.20, cmt. 1 (5th ed. West Group 1995).

Smothers v. Baptist Hospital East, 468 S.W.3d 878, 881 (Ky. App. 2015).

Searcy has failed to articulate special reasons for review. The argument he presents is clearly not properly preserved for review. Further, a substantial question exists as to whether the issue is moot and whether passing on the matter would result in an improper advisory opinion on a theoretical legal question.² Thus, we have determined discretionary review was improvidently granted and the July 18, 2018, Order granting same is hereby vacated. The motion

² “Clearly the courts are not involved in deciding purely hypothetical questions.” *Kraus v. Kentucky State Senate*, 872 S.W.2d 433, 439 (Ky. 1993) (citing *Commonwealth v. Crow*, 263 Ky. 322, 92 S.W.2d 330 (1936)).

for review of the decision of the Fayette Circuit Court is denied and, therefore, this appeal must be and hereby is DISMISSED.

ENTERED: Oct. 18, 2019



JUDGE, COURT OF APPEALS

ALL CONCUR.

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