

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00116-CV

IN RE RICHARD FRANCIS

Original Proceeding

MEMORANDUM OPINION

Richard Francis petitioned for habeas relief from the trial court's order revoking community supervision on a judgment for criminal contempt, and from the order of commitment. On June 8, 2011, we ordered Francis's release on bond pending the resolution of his petition. The Attorney General filed a response. We deny habeas relief and remand relator to the custody of the sheriff to complete his 180-day sentence.

Francis is the obligor on an order for child support. Francis was originally found to be in contempt on December 20, 2000, and was placed on community supervision. On January 23, 2003, the trial court found that Francis had violated the terms of community supervision by failing to pay child support on four specified dates and ordered Francis to be jailed for 180 days. The trial court suspended the commitment and continued Francis

on community supervision for 120 months from the date of the order. On April 8, 2010, the Attorney General filed a motion to revoke community supervision. On December 8, 2010, the trial court found that Francis had violated the terms of community supervision by failing to pay child support on three specified dates, revoked the community supervision order of January 23, 2003, and ordered that Francis be committed to the county jail for 180 days. The enforcement order incorporates a commitment order, as follows:

The Court ORDERS the Sheriff of *JEFFERSON* County to arrest *RICHARD FRANCIS SR* and commit him to the county jail as ordered above.

The Court ORDERS *RICHARD FRANCIS SR* to appear before this Court *JEFFERSON COUNTY COURTHOUSE, 1001 PEARL ST., BEAUMONT, TX* at 8:30 o'clock a.m., on the 9th day of February, 2011, to begin commitment to the county jail.

IT IS FURTHER ORDERED that any time obligor has served in jail for this cause since **AUGUST 1, 2010**, be counted towards the time ordered above.

On February 9, 2011, the trial court signed a commitment order. The writ of commitment issued the same day. Francis has been restrained in the county jail since February 9, 2011.

In his sole issue, Francis contends that the order revoking community supervision and the commitment order are void because the order of commitment was not signed in a short and reasonable time after the trial court revoked community supervision. An arrest for contempt without a written commitment order is an illegal restraint from which the prisoner is entitled to habeas relief. *In re Richardson*, 218 S.W.3d 902, 903 (Tex. App.—

Texarkana 2007, orig. proceeding) (citing *Ex parte Amaya*, 748 S.W.2d 224, 225 (Tex. 1988) (orig. proceeding)). The trial court “has no authority to verbally order a person confined for contemptuous acts committed outside the presence of the court[.]” *Amaya*, 748 S.W.2d at 224. Although the trial court may cause the sheriff to hold the person for a short and reasonable time while the judgment and commitment are being prepared for his signature, any further delay would violate due process. *Id.* at 224-25. “To hold otherwise would allow the trial court to place a person in jail indefinitely without any method for the prisoner to obtain his release by purging himself of the contempt and perhaps, without knowledge of why he was being held in contempt.” *Id.* at 225.

The due process concerns that were present in *Amaya* are absent here. *Amaya* was taken into custody without a written order to the sheriff commanding that *Amaya* be confined. *Id.* In Francis’s case, the trial court incorporated an order of commitment into the judgment, but suspended the order of arrest to a date certain on which Francis was ordered to appear. On the appearance date, the trial court issued another commitment order and Francis was actually taken into custody. No period of time elapsed between the time the trial court revoked community supervision and the time the trial court ordered Francis’s arrest. The complicating factor here is the trial court’s order that Francis appear before the trial court on February 9, 2011, to begin serving his punitive contempt sentence. Francis was at large from December 8, 2010, until February 9, 2011. The trial

court issued an order of commitment on the same day that Francis was taken into custody.

Other cases cited by Francis are distinguishable from his case. In *Barnett*, the trial court signed a commitment order and the relator was taken into custody, but the trial court did not sign the judgment of contempt within a reasonable time. *Ex parte Barnett*, 600 S.W.2d 252, 256 (Tex. 1980) (orig. proceeding). In *Shaklee*, the contempt judgment failed to specify the number of days the sheriff was to detain the contemnor. *Ex parte Shaklee*, 939 S.W.2d 144, 145 (Tex. 1997) (per curiam). In *Richardson*, the contempt judgment assessed a 180-day sentence but failed to order any officer to take the contemnor into custody, and the writ issued by the clerk five days after Richardson was confined by the sheriff was issued too late to satisfy the due process right to be held under an order of commitment. *Richardson*, 218 S.W.3d at 903-04. In *Markowitz*, the trial court waited until the contemnor had been confined for seven days before reducing the judgment of contempt to writing. *In re Markowitz*, 25 S.W.3d 1, 4 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding). In *Alford*, the trial judge did not sign a judgment of contempt when he signed the commitment order and had Alford taken into custody, and the commitment order failed to set forth the specific details of the contempt. *Ex parte Alford*, 827 S.W.2d 72, 73-74 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding).

Francis's complaint is that the trial court signed an order revoking community supervision and ordered the sheriff to take Francis into custody to serve 180 days in jail for contempt, but deferred Francis's actual confinement to a later date. The trial court signed both a written order that explained why Francis was being detained and a written order of commitment that commanded the sheriff to confine Francis. Both were signed before Francis was taken into custody on February 9, 2011. Francis remained at large from December 8, 2010, to February 9, 2011, but Francis has not explained how the delay between revocation and confinement deprived Francis of due process. We overrule the issue presented in the petition.¹

We deny the petition for writ of habeas corpus and remand Francis to the custody of the Sheriff of Jefferson County to serve the sentence for contempt as ordered by the trial court.

PETITION DENIED.

PER CURIAM

Submitted on July 1, 2011
Opinion Delivered August 31, 2011

Before Gaultney, Kreger, and Horton, JJ.

¹ We do not address Francis's *pro se* filings because he is represented by counsel in this proceeding.