

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001046-MR

SCOTT EGNER

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 01-CR-00200

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: BARBER, KNOPF, AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant, Scott Egner ("Egner"), appeals from an order of the Laurel Circuit Court entered on April 18, 2003, in which the trial court revoked his conditional discharge.

On appeal, Egner argues that the trial court abused its discretion when it revoked his conditional discharge since his First Amendment right to freedom of religion was violated by the mission house at which he agreed to stay. Egner also argues that the trial court abused its discretion when it revoked his conditional discharge because he was not able to meet the

mission house's requirement that he either find employment or perform manual labor at the facility. Finding no abuse of discretion, this Court affirms the Laurel Circuit Court's revocation of Egner's conditional discharge.

On August 17, 2001, Egner was indicted on one count of sexual abuse in the first degree. He was alleged to have subjected an eleven year old girl to sexual contact. On November 22, 2002, Egner pled guilty in exchange for the Commonwealth's offer that it would recommend a sentence of one and one-half years. On December 20, 2002, Egner was sentenced by the trial court to one and one-half years. Egner served out his sentence on that same day. Because he was a convicted sex offender, Egner was subject to three additional years of conditional discharge under the supervision of the Department of Corrections, Division of Probation and Parole, pursuant to KRS 532.043. Egner was also required to register as a sex offender under a provision of the Sex Offender Registration Act, specifically KRS 17.510. On December 20th, Egner met with Susan Phelps, a probation and parole officer in Laurel County. She explained to Egner the various requirements placed on his conditional discharge such as if he wished to change address then he was required to give prior notification to his probation and parole officer and wait for the officer's approval before moving. She also helped him to complete the necessary forms to

register as a sex offender. Since none of his family members could or would take him in, Egner agreed to go to a mission house, the Recycle Me O Lord Center ("Recycle") in Louisville, Kentucky. That same day, Egner went to Louisville and moved into Recycle.

Egner lived at Recycle from December 20, 2002, to January 13, 2003, twenty-four days. On the 13th, Egner met with his probation and parole officer, Allen George ("George"), and complained that Recycle required its residents to seek employment and if a resident could not find employment, then Recycle required the resident to do manual labor at the facility. Recycle also required its residents to attend mandatory church services. Egner told George that he did not want to abide by Recycle's rules.

After Egner left George's office he moved out of Recycle and moved into another mission house down the street. Egner failed to give the required prior notice to George and, as a result, failed to receive prior approval. After Egner had moved, he notified George. On the 14th, George went to the second mission house to determine if it was a suitable placement for Egner. It was not since it was within one thousand feet of a daycare center. Under KRS 17.495, Egner was prohibited from residing within one thousand feet of a high school, middle school, elementary school, or licensed daycare center. George

told Egner to return to Recycle until George could find a suitable placement for Egner. But Egner told George that Recycle would not take him back since Egner refused to abide by its rules.

On the 14th, Egner moved out of the second mission house and moved into a third mission house, The Healing Place. On the 15th, after he had moved into The Healing Place, Egner notified George. George verified that The Healing Place was a suitable facility for Egner but was outside of George's geographical area. So George decided to make arrangements for Egner's case to be transferred to another probation and parole officer in the same geographical area as The Healing Place so Egner could reside there. But after spending one night at The Healing Place, Egner moved yet again to a fourth mission house, the Wayside Mission. But the Wayside Mission was not suitable since it was within one thousand feet of a school. On January 16, 2003, after Egner had moved into the Wayside Mission, Egner notified George. That same day, George arrested Egner for violating the terms of his conditional discharge.

After being arrested, Egner was returned to Laurel County for a revocation hearing. At the hearing, both Susan Phelps and Allen George testified for the Commonwealth. Egner called no witnesses and did not testify. His attorney asked the trial court to be lenient and to give Egner a second chance.

But the trial court revoked Egner's conditional discharge and sentenced him to serve the additional three years. Now Egner appeals to this Court.

On appeal, Egner argues that the Laurel Circuit Court abused its discretion when it revoked his conditional discharge. According to Egner, Recycle's requirement of mandatory attendance of the church services violated his First Amendment right to freedom of religion. He insists that George violated his due process rights and his First Amendment rights when George ordered him to return to Recycle while awaiting a new placement. Since his First Amendment rights were violated, he believes this Court should reverse the trial court and reinstate his conditional discharge.

Egner also claims his Eighth Amendment rights against cruel and unusual punishment were also violated. Egner argues that it was cruel and unreasonable for Recycle to require him to either seek employment or to perform manual labor. According to Egner, he was physically incapable of performing manual labor since he received disability benefits, although he never reveals the nature of his disability. Egner cites Archiniega v. Freeman, 404 U.S. 4, 92 S.Ct. 22, 30 L.Ed.2d 242 (1971) for the proposition that the conditions placed on his discharge must be reasonable. He insists that being required to perform manual labor was clearly unreasonable.

Finally, he inexplicably argues that KRS 17.510(2) required George to assist him in completing the necessary forms to register as a sex offender, and that George failed to assist him.

A trial court has abused its discretion when, in exercising one of its judicial powers, it has acted in an arbitrary and capricious manner or it has unreasonably and unfairly rendered a decision. Kuprion v. Fitzgerald, Ky., 888 S.W.2d 679, 684(1994).

Despite his insistence to the contrary, Egner's arguments are simply without merit. Egner was never required to exclusively stay at Recycle, but he was required to stay at a suitable placement, and he was required to give prior notice and receive prior approval if he wished to move. But Egner chose to leave Recycle without giving the required prior notice and without receiving the required prior approval. This violated the conditions of his release and was, by itself, sufficient to justify revocation, but this was not Egner's only violation, the second mission house into which Egner moved was within one thousand feet of a daycare center. Egner was specifically prohibited from doing so by KRS 17.495. Yet he violated this statute. This second violation by itself would have been sufficient to revoke his conditional discharge, but Egner moved yet again without giving notice or receiving approval. This

time he moved into The Healing Place, which was a suitable place for him to reside. And even though George had sufficient grounds to arrest Egner for violating the conditions of his discharge, George decided to transfer Egner's case to a probation and parole officer within the same geographical area as The Healing Place so Egner could live there, but before George could make the transfer, Egner moved yet again, without giving notice or receiving approval. Egner moved to a fourth mission house, the Wayside Mission. This facility was also within one thousand feet of a school. Egner again violated KRS 17.495. Given these facts, the Laurel Circuit Court's decision to revoke Egner's conditional discharge was neither unreasonable nor unfair. Nor were its actions arbitrary or capricious. Given Egner's behavior, the Laurel Circuit Court had little recourse but to revoke Egner's conditional discharge.

In conclusion, this Court finds that the trial court did not abuse its discretion and it affirms the Laurel Circuit Court's order of April 18, 2003, in which it revoked Egner's conditional discharge.

ALL CONCUR.

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