

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001884-MR

RONNIE GENE WEBB

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 79-CR-00058

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * **

BEFORE: BARBER, KNOPF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. This is an appeal from an order denying appellant's motion filed pursuant to CR 79.02(2) to compel the court to order his criminal judgment and sentence satisfied in full. We agree with the lower court that CR 79.02 does not apply to criminal judgments and, thus, relief was properly denied under that rule. Accordingly, we affirm.

On March 30, 1979, appellant, Ronnie Webb, was convicted of first-degree assault and sentenced to ten (10)

years' imprisonment. The record is unclear as to the status of this sentence - whether Webb served out this sentence or not. However, in a brief filed in the record in support of an unrelated motion in federal court for a writ of habeas corpus, Webb states that he was paroled on the 1979 conviction and his parole was later revoked when he was convicted of another criminal offense in 1986. Apparently, Webb received an enhanced twenty-year sentence on the 1986 conviction because he was also convicted of being a persistent felony offender based on the 1979 conviction. At the time of the habeas corpus motion in 1995, Webb stated that he was still serving the twenty-year sentence.

For reasons unknown to this Court, Webb filed a motion on June 19, 2003, in the Fayette Circuit Court pursuant to CR 79.02(2) "TO COMPEL ORDER JUDGMENT SATISFIED BY EXECUTION IN FULL." In that motion, Webb sought to have the court enter an order pursuant to CR 79.02(2) adjudging that the judgment on the 1979 conviction had been satisfied in full. Webb alleged in this motion that the judgment on the 1979 conviction had been satisfied by his serve-out of the prison sentence. On July 2, 2003, the court denied the motion on the basis that CR 79.02(2) applies only to civil judgments and not to criminal sentences. This appeal by Webb followed.

CR 79.02 provides:

When a judgment has been satisfied such satisfaction may be certified upon the records of the Circuit Court as follows:

(1) Upon the return of an execution showing that a judgment has been satisfied the clerk shall thus enter satisfaction on the judgment: "Satisfaction by execution." A party or his attorney receiving satisfaction of a judgment otherwise than by execution may make, date and sign this entry on the margin of the judgment: "Satisfaction in full." The court may upon motion compel an entry of satisfaction to be made.

(2) The satisfaction of the judgment may be shown by the entry of a document styled satisfaction of judgment indicating that it has been satisfied in full. The aforesaid Satisfaction of Judgment should be executed by the party or his attorney having received said satisfaction. The court may upon motion compel an entry of satisfaction to be made.

Webb argues that the above civil rule would be applicable in criminal cases pursuant to RCr 13.04 which states that "[t]he rules of Civil Procedure shall be applicable in criminal proceedings to the extent not superceded by or inconsistent with these Rules of Criminal Procedure."

We agree with the lower court that CR 79.02 is applicable only to civil judgments. The language of the rule relative to satisfaction by execution is clearly a reference to payment of a money judgment. The execution of a criminal judgment is governed by RCr 11.22. Further, the trial court does not have the authority to determine when a criminal

judgment has been satisfied. As stated by Justice Leibson in his dissenting opinion, "In our present sentencing system, at the point where a convicted offender is turned over to the Department of Corrections, the power to determine the period of incarceration passes completely to the Parole Board."

Commonwealth v. Reneer, Ky., 734 S.W.2d 794, 800 (1987); see also Prater v. Commonwealth, Ky., 82 S.W.3d 898 (2002); KRS 439.340. Likewise, the Court in Peck v. Conder, Ky., 540 S.W.2d 10, 12 (1976) stated:

[W]hen a person has begun to serve his sentence the function and authority of the trial court is finished. What then happens to the prisoner is entirely in the bailiwick of the executive branch of government, and is no business of the courts, including the trial court.

For the reasons stated above, the order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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