

RENDERED: JULY 29, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001033-MR

KENNETH RAVENSCRAFT

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE STEVEN R. JAEGER, JUDGE
ACTION NO. 04-CI-00635

KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: BARBER AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE.¹
JOHNSON, JUDGE: Kenneth Ravenscraft, pro se, has appealed from
the May 4, 2004, order of the Kenton Circuit Court which
dismissed his petition for writ of mandamus. Having concluded
that the trial court properly dismissed Ravenscraft's petition,
we affirm.

Following his guilty plea to possession of a

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

controlled substance in the first degree,² in Case No. 02-CR-00119, Ravenscraft was sentenced on April 22, 2002, by the trial court to three years in prison, probated for three years. While on probation for the possession conviction, Ravenscraft was charged in Case No. 02-CR-00637-001 with burglary in the second degree,³ a Class C felony, and entered a guilty plea to the offense on January 9, 2003. The trial court accepted Ravenscraft's plea and on March 3, 2003, found him guilty of burglary in the second degree. The trial court then entered a final judgment on March 5, 2003, sentencing Ravenscraft to 61 months in prison.⁴ Thereafter, Ravenscraft's probation in Case No. 02-CR-00119 was revoked and he was remanded to the custody of the Kentucky Department of Corrections to serve both sentences.⁵ However, the final judgment in Case No. 02-CR-00637-001 did not address Ravenscraft's previous conviction and sentence, and it did not state whether the sentence of 61 months should be served concurrently or consecutively with the previous

² KRS 218A.1415. Ravenscraft was charged with possession of a controlled substance in the first degree, a Class D felony on or about November 21, 2001, and he entered a guilty plea to the charge in March 2002.

³ KRS 511.030.

⁴ The trial court gave Ravenscraft credit for 17 days spent in custody toward the 61-month sentence.

⁵ The record in this case begins with Ravenscraft's filing of his petition for writ of mandamus. The final judgment in Case No. 02-CR-00637-001 is attached to Ravenscraft's memorandum in support of his petition, but this Court was not provided with the order revoking Ravenscraft's probation in Case No. 02-CR-00119.

three-year sentence. The Department of Corrections ran the two sentences consecutively.

On March 8, 2004, Ravenscraft filed in the Kenton Circuit Court a pro se petition for writ of mandamus, pursuant to CR⁶ 81, requesting the trial court to order the Department of Corrections to run his two sentences concurrently under KRS 532.110(2)⁷. In his petition, Ravenscraft argued that since the trial court's judgment in Case No. 02-CR-00637-001 was silent concerning whether his sentence was to run consecutively or concurrently with the sentence in Case No. 02-CR-00119, KRS 532.110(2) mandated that the sentences be served concurrently. Ravenscraft argued that if the trial court had intended for the sentences to run consecutively, it would have so stated in the final judgment, and he requested a writ of mandamus requiring the Department of Corrections to recalculate his sentences to run concurrently.⁸ On April 28, 2004, the Commonwealth filed a

⁶ Kentucky Rules of Civil Procedure.

⁷ KRS 532.110(2) states as follows:

If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve unless the sentence is required by subsection (3) of this section or KRS 533.060 to run consecutively.

⁸ Ravenscraft also argued that the judgment was final and because the Commonwealth failed to file a motion under CR 59 for the trial court to alter, amend, or vacate the judgment, pursuant to Commonwealth v. Marcum, 873

response to Ravenscraft's petition and a motion to dismiss. The Commonwealth argued that Ravenscraft had failed to exhaust all administrative requirements as required by KRS 454.415 before filing his petition for writ of mandamus, and that KRS 533.060(2), not KRS 532.110(2), governed the calculation of Ravenscraft's prison sentences. In an order entered on May 5, 2004, the trial court dismissed Ravenscraft's petition. This appeal followed.

Ravenscraft contends that since the trial court's judgment in Case No. 02-CR-00637-001 failed to direct the manner in which the sentences would be served, KRS 532.110(2) requires his two prison sentences to be served concurrently, and that the Department of Corrections acted improperly and without authority when it determined his sentences would be served consecutively. We find these arguments to be without merit.

KRS 533.060(2) provides as follows:

When a person has been convicted of a felony and is committed to a correctional detention facility and released on parole or has been released by the court on probation, shock probation, or conditional discharge, and is convicted or enters a plea of guilty to a felony committed while on parole, probation, shock probation, or conditional discharge, the person shall not be eligible for probation, shock probation, or conditional discharge and the period of confinement for that felony shall not run

S.W.2d 207, 211 (Ky. 1994), the trial court had no authority to void the judgment.

concurrently⁹ with any other sentence
[emphasis added].

In Riley v. Parke,¹⁰ our Supreme Court addressed the apparent conflict between KRS 532.110(2) and KRS 533.060(2) and held that KRS 533.060(2) takes precedence over KRS 532.110(2) because the intent of the Legislature in drafting KRS 533.060(2) “was to exact a further penalty upon those who, allowed to leave prison early, choose to violate their agreements and commit yet more crimes,”¹¹ e.g., by “not having their subsequent sentences served concurrently” [emphasis omitted].¹² Further, our Supreme Court concluded that the nature of KRS 533.060(2) was “essentially administrative” and within the scope of the Department of Correction’s duties.¹³ We also note that the 2002 version of KRS 532.110(2) provides specifically that if a defendant’s sentences are required to run consecutively under KRS 533.060, as in this case, then it is an exception to the rule in KRS 532.110(2). This amendment eliminates any question as to the conflict between the two statutes, since KRS 532.110 specifically subordinates itself to KRS 533.060(2).

⁹ This language is mandatory and does not allow the Department of Corrections discretion in applying KRS 533.060(2).

¹⁰ 740 S.W.2d 934 (Ky. 1987).

¹¹ Id. at 935.

¹² Id. (citing Devore v. Commonwealth, 662 S.W.2d 829, 831 (Ky. 1984)).

¹³ Id.

Furthermore, pursuant to KRS 454.415(1), the trial court was correct in dismissing Ravenscraft's petition because he failed to exhaust the administrative remedies available prior to filing his petition. KRS 454.415(1) states:

- (a) No action shall be brought by an inmate, with respect to a prison disciplinary proceeding or challenges to a sentence calculation or challenges to custody credit, until administrative remedies as set forth in Department of Corrections policies and procedures are exhausted.
- (b) Administrative remedies shall be exhausted even if the remedy the inmate seeks is unavailable.
- (c) The inmate shall attach to any complaint filed documents verifying that administrative remedies have been exhausted.

Ravenscraft's action clearly is a challenge to a sentencing calculation and therefore falls within the purview of KRS 454.415(1).

The version of § 17.4 of the Kentucky Corrections Policies and Procedures in effect at the time Ravenscraft was formally sentenced in Case No. 02-CR-00637-001, provides the administrative remedies for an inmate claiming incorrect sentencing calculations as follows:

A. REVIEW REQUEST

- 1. An inmate shall request, in writing, a review or explanation of the method of sentence

calculation for the sentences on which he is presently committed to the Department.

. . .

3. The request shall be in writing and shall include:
 - a. the subject matter for which the review is requested;
 - b. a brief statement of the matter to be reviewed; and
 - c. an explanation of the inmate's belief on how the calculation shall be applied to the sentence.

B. INITIAL RESPONSE

1. Upon receipt of the initial written review or explanation from the inmate of the method of sentence calculation, the applicable office . . . shall review the inmate record prior to giving a written response.
2. The response shall include:
 - a. an explanation of the method of calculation; and
 - b. any statutes applied in the calculation.
3. A written response shall be issued within five (5) working days of the receipt of the inmate's request for review or explanation.

C. APPEAL

An inmate may appeal in writing from the initial written review or explanation

given to the Offender Information Services Branch The appeal shall be filed within ten (10) days from the date the written review or explanation is given and the inmate shall attach a copy of his initial request for review and the written review or explanation given in response with his appeal.

D. FINAL REVIEW

1. Upon receipt of the appeal, the Offender Information Services Branch shall review the initial request, the written response and the inmate record.
2. The response on appeal shall include:
 - a. the explanation of the method of calculation; and
 - b. any statutes applied in the calculation.
3. The response on appeal shall be issued within fifteen (15) working days of the receipt of the inmate's request for review.

Since Ravenscraft did not provide any proof that he exhausted the administrative requirements of KRS 454.415 prior to filing his petition for writ of mandamus, the trial court correctly dismissed the petition.

For the foregoing reasons, the order of the Kenton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kenneth Ravenscraft, Pro Se
Lexington, Kentucky

BRIEF FOR APPELLEE:

No brief filed.