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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001557-MR

MAURICE WILSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 88-CR-000557

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BUCKINGHAM, JUDGE: Maurice Wilson appeals from an order of the Jefferson Circuit Court denying his petition for writ of execution. We affirm.

Wilson is a prison inmate here in Kentucky. On September 2, 1988, he was sentenced to one year in prison for the crime of third-degree sodomy. After serving his sentence, Wilson was convicted and sentenced to prison for 17 years in

1993 for crimes unrelated to the sex offense for which he was sentenced to prison in 1988 or any sex offense in general.¹

In August 2000, while still in prison on the latter charges, Wilson filed a petition for a writ of prohibition in the Jefferson Circuit Court. He alleged therein that the Department of Corrections (DOC) had improperly directed him to complete the Sex Offender Treatment Program (SOTP) even though he had completely served his sentence on the sodomy charge and was not incarcerated for a sex-related offense. On September 12, 2000, the court entered an opinion and order prohibiting the DOC from requiring Wilson to complete the SOTP because to do so imposed the statutes on Wilson *ex post facto*.

In October 2000, Wilson filed a state petition for writ of habeas corpus, based on the claim that the Parole Board had ordered his parole deferred and required him to complete the SOTP. In February 2001, the circuit court denied issuing the writ, finding that the Parole Board had the authority to defer Wilson's parole and recommend sex offender treatment. Wilson appealed, but this court affirmed the circuit court's order in an opinion rendered on April 5, 2001.

In April 2004, Wilson filed a petition for writ of execution in the Jefferson Circuit Court. He claimed that the

¹ Wilson's sentence was for the crimes of robbery in the first degree and possession of a controlled substance.

Parole Board was again attempting to violate the writ of prohibition by denying him meritorious good time credit if he did not complete the SOTP. On July 2, 2004, the court entered an opinion and order finding that the DOC had not violated the writ of prohibition because it had not required Wilson to complete the SOTP. Instead, the court found that the DOC was within its discretion in withholding good time credit because Wilson had not complied with the Parole Board's recommendation for him to complete the SOTP. This appeal by Wilson followed.

KRS² 197.045 gives the DOC commissioner the discretion to grant meritorious good time credit to an inmate. Wilson contends that the DOC may not deny him meritorious good time credit because of his failure to complete the SOTP. He states that such a denial violates the writ of prohibition entered by the circuit court in 2000. He further contends that the DOC is violating *ex post facto* laws by their actions.

In Stewart v. Commonwealth, 153 S.W.3d 789 (Ky. 2005), the Kentucky Supreme Court stated that the imposition of a condition of attendance at a Sex Offender Treatment Program was merely a condition of parole which was within the sound discretion of the Parole Board. Id. at 793. Further, the court stated that "[u]tilization of the Sex Offender Treatment Program by the Parole Board is one of the options available to the Board

² Kentucky Revised Statutes.

in determining the conditions of parole." Id. The court also stated that "[t]he Sex Offender Treatment Program is required for sex offenders, but that does not mean that it cannot be a condition of parole for other offenders on a case-by-case basis." Id. at 794.

It is clear from the holding in the Stewart case that the Parole Board had the authority to impose completion of the SOTP as a condition of parole. Further, there is no entitlement to meritorious good time credit under KRS 197.045(3). See Martin v. Chandler, 122 S.W.3d 540, 542 (Ky. 2003). Whether or not an inmate receives such credit is within the discretion of the Corrections Cabinet. KRS 197.045(3). Therefore, the circuit court properly denied Wilson's petition for writ of execution.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Maurice Wilson, *Pro Se*
LaGrange, Kentucky 40031

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Tami Allen Stetler
Assistant Attorney General
Frankfort, Kentucky