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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002496-MR

JASON N. BIERMAN

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE STEPHEN P. RYAN, JUDGE
ACTION NO. 95-CR-002955

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF AND TACKETT, JUDGES; ROSENBLUM, SENIOR JUDGE.¹

ROSENBLUM, SENIOR JUDGE: The primary focus of this appeal is the denial of appellant's motion for credit against his revoked sentence for time he spent on probation. In denying appellant's motion for probationary "street time" credit, the trial judge concluded that the legislative authority upon which appellant relied in claiming the credit applies only to credit for time

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

spent on parole. Finding no error in the decision of the trial judge, we affirm the denial of credit in this case.

Appellant's application for probation credit was predicated upon the attachment of what had previously been H.B. 269 to the General Assembly's adoption of the state budget bill for the fiscal year July 1, 2003 through June 30, 2004. The H.B. 269 amendment contained the following provision:

36. COMMUNITY SERVICES AND LOCAL FACILITIES.
a. Probation and Parole Credit:
Notwithstanding KRS 439.344, the period of time spent on parole shall count as part of the prisoner's remaining unexpired sentence, when it is used to determine a parolee's eligibility for a final discharge from parole as set out in KRS 439.354, or when a parolee is returned for a violation other than a new felony conviction.

Appellant points to the inclusion of the word "Probation" in the heading as bringing credit for time spent on probation within the purview of the statute. Like the trial judge, we find no merit in appellant's contention.

Cardinal principles of statutory construction require courts to discern legislative intent from the plain meaning of the language employed and to accord the words of a statute their literal meaning unless to do so would result in an absurd or wholly unreasonable conclusion. Popplewell's Alligator Dock No. 1, Inc. v. Revenue Cabinet, 133 S.W.3d 456 (Ky. 2004). Although appellant correctly argues that the title placed upon an

enactment by the legislature is a proper consideration, it is even more firmly established that courts must look to the provisions of a statute as a whole, including its object and policy, in order to ascertain the statutory purpose. County of Harlan v. Appalachian Regional Healthcare, Inc., 85 S.W.3d 607, (Ky. 2002). While the title of the statute upon which appellant relies for probation credit does in fact contain the word "probation," a fair reading of the body of the text makes clear that the phrase "probation and parole credit" is merely a generic heading on a statute dealing solely with credit for time spent on parole. The analysis by which we reach this conclusion mirrors the methodology for ascertaining legislative intent approved by the Supreme Court of Kentucky in County of Harlan:

In interpreting a statute, this Court must be guided by the intent of the legislature in enacting the law. No single word or sentence is determinative, but the statute as a whole must be considered.

Supra, at 611. Reading the contested enactment in that light leaves absolutely no doubt that the legislature intended it to apply solely to credit for time spent on parole.

The General Assembly's attachment of H.B. 269 to the budget bill evinces its intent to temporarily suspend operation of KRS 439.344, a statute proscribing credit for time spent on parole:

The period of time spent on parole shall not count as a part of the prisoner's maximum sentence except in determining parolee's eligibility for a final discharge from parole as set out in KRS 439.354.

Because this statute is directed solely at parole, it cannot be seriously argued that an enactment temporarily suspending its operation applies to credit for types of release as well. Other than the phrase "Probation and parole credit" in the heading, H.B. 269 makes no mention of anything other than credit for time spent on parole.

We are not free to read into an enactment an intention other than that expressed in a literal reading of the words employed nor are we free to add words which would alter an enactment's unambiguously stated purpose. Accordingly, we are convinced that the trial judge properly applied the temporary enactment contained in the budget bill in denying appellant's motion for credit for time spent on probation.

Finally, appellant makes a passing reference in his brief to the timeliness of the revocation of his probation. Because we find no indication that this issue was ever presented to the trial judge for resolution, we will not consider it for the first time on appeal.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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