

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-001673-MR

DONALD R. BROWN, JR.

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 05-CI-00334

KENTUCKY DEPARTMENT OF
PROBATION AND PAROLE & GLENN
HAEBERLIN

APPELLEES

OPINION AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; MOORE AND NICKELL, JUDGES.

NICKELL, JUDGE: Donald Brown, (hereinafter “Brown”), *pro se*, brings this appeal from a May 12, 2005, order of the Franklin Circuit Court dismissing his petition for a writ of *mandamus*, or alternatively, a writ of *habeas corpus*. We affirm.

At the outset, we must address the unique posture of this appeal. pleadings submitted by Brown indicate he was indicted on, pled guilty to, was sentenced for, and was probated on, various crimes in both Pulaski District Court and Pulaski Circuit Court

beginning in 1999 and continuing through 2002. Rather than voicing his current concerns about his probation revocation to the courts in Pulaski County, or directly to this Court, Brown instead sought relief in Franklin Circuit Court. As a result, we are without the full record of the proceedings about which Brown now complains. Our review is limited to a few documents Brown has chosen to attach to various pleadings filed in the Franklin Circuit Court. Additionally, we note that no brief was filed in this Court on behalf of the appellees. The only document filed on behalf of appellees is a motion to dismiss for lack of subject matter jurisdiction which was filed in Franklin Circuit Court on April 28, 2005.

On May 24, 2001, Brown pled guilty in the Pulaski Circuit Court to four counts of rape in the third degree¹ and one count of sodomy in the second degree.² On August 3, 2001, final sentencing was entered. Brown was sentenced to serve five years in prison on each offense with all terms being ordered to run concurrently. The sentence was suspended and Brown was placed on supervised probation for five years.

In December 2001 Brown pled guilty to four counts of criminal possession of a forged instrument in the second degree³ and was sentenced to three years in prison on each offense.⁴ All terms were ordered to run concurrently with one another, but

¹ Kentucky Revised Statutes (KRS) 510.060.

² KRS 510.080.

³ KRS 516.060.

⁴ Because the Pulaski Circuit Court record was not filed as part of the record on appeal, we cannot determine the date on which Brown actually pled guilty to these charges. The judgment on the guilty plea, pending completion of the pre-sentence investigation, indicates the guilty plea

consecutively to the previously entered sentence of five years on each of the sex crimes. This sentence was likewise suspended and Brown was placed on supervised probation for three years.

As a condition of probation for both of the foregoing sentences, Brown was to “[r]efrain from any further violation of the law.” He was also to attend sex offender treatment classes and pay restitution in the amount of \$2,530.00.

On August 7, 2002, Brown was arrested for operating a motor vehicle on a suspended license⁵ and having no insurance.⁶ Brown claims he admitted to his probation officer, Ken Jones, at the detention center that same day that his driver's license was suspended and that he had no car insurance. Brown also claims Officer Jones promised he would not face probation revocation if he was convicted of nothing more serious than a misdemeanor and promptly paid any fine and court costs imposed as a result of this latest arrest. Several hours later Brown was released on \$200.00 bail.

On September 2, 2002, while Brown was awaiting trial on the charges of operating a motor vehicle on a suspended license and having no insurance, the Pulaski District Court issued a warrant for Brown's arrest due to his failure to pay the balance of \$1,750.00 in fines and costs levied against him in 1999 and 2000 on unrelated theft by

was entered on December 6, 2001. However, the final judgment indicates the guilty plea was entered on December 12, 2001.

⁵ KRS 186.620.

⁶ KRS 304.39-080(5).

deception⁷ charges. Brown says the District Court recognized he was having difficulty paying and gave him the option of serving 60 days in jail in lieu of paying the \$1,750.00 in fines and costs. Brown claims he told Officer Jones about his arrest and the option of serving the 60 days and Jones agreed that Brown's probation would not be revoked if Brown served the 60 days and promptly paid any new fines and court costs. On September 17, 2002, according to an affidavit from Officer Jones, Brown pled guilty to operating on a suspended license, having no insurance, contempt of court, and theft by deception.⁸ He also agreed to serve 60 days in jail and he promptly paid a fine of \$159.00. Brown says he entered the guilty plea and agreed to serve the 60 days in reliance on the alleged promises from Officer Jones.

On September 30, 2002, the Commonwealth moved the Pulaski Circuit Court to revoke Brown's probation and served notice on the Department of Advocacy as Brown's counsel. In support of its motion to revoke, the Commonwealth filed an affidavit from Officer Jones dated September 25, 2002, stating Brown had received two misdemeanor convictions on September 17, 2002, and had failed to attend sex offender treatment classes on three occasions in July and August, 2002, twice without excuse and once because he was in jail.

At a probation revocation hearing held on October 27, 2002, the Pulaski Circuit Court found probable cause to believe Brown had “failed to comply with the

⁷ KRS 514.040.

⁸ Brown disputes that he pled guilty to a new charge of theft by deception on September 17, 2002. He claims this is a reference to the 1999 and 2000 theft charges that gave rise to the \$1,750.00 in fines and costs in Pulaski District Court.

terms of his probation” and entered an order revoking probation and imposing sentence. In its December 6, 2006, order revoking probation and imposing sentence, the trial court wrote that Brown had been served with notice of the probation revocation; that he and his attorney had attended the hearing; and that they had been given the opportunity to convince the trial court to withhold judgment but insufficient cause had been shown. The trial court then proceeded to impose a total sentence of eight years in prison (five years and three years to run consecutively) with credit for having served 169 days.

No further action was taken between entry of the trial court's probation revocation order on December 6, 2002, and March 7, 2005, when Brown filed a petition for a writ of *mandamus*, or, in the alternative, a writ of *habeas corpus* in the Franklin Circuit Court. Brown's petition claimed there were several irregularities surrounding the probation revocation including: (1) Officer Jones reneged on two alleged agreements with Brown; (2) Brown did not receive advance notice of the probation revocation hearing, the alleged violation(s), or the evidence the Commonwealth planned to introduce at the revocation hearing; and, (3) the trial court did not make written findings in support of its ruling or specify its reason(s) for revoking Brown's probation. On May 12, 2005, the Franklin Circuit Court entered an order dismissing Brown's petition for a writ of *mandamus* or alternatively, a writ of *habeas corpus* because it was without jurisdiction to review a decision of the Pulaski Circuit Court. This appeal followed. We affirm.

Brown contends on appeal that: (1) the Franklin Circuit Court erroneously dismissed his petition for lack of jurisdiction; (2) Officer Jones reneged on not one, but

two, agreements; (3) no one served Brown with a copy of the motion to revoke probation or gave him written notice of the date of the revocation hearing, the alleged violations, or the evidence the Commonwealth intended to introduce at the hearing; (4) the trial court failed to make factual findings in its written order and did not specify the evidence it relied upon or its reasons for revoking probation; (5) the revocation order was not entered in Brown's presence; and (6) Brown did not receive a copy of the written order revoking probation. However, the granting of a writ of *mandamus* is extraordinary and appropriate “only when the situation is so exceptional that there is no adequate remedy at law to prevent a miscarriage of justice.” *Martin v. Administrative Office of the Courts*, 107 S.W.3d 212, 214 (Ky. 2003). Brown has not made the threshold showing.

Writs of *mandamus* are:

reserved for those situations in which a court is acting 1) without or beyond its jurisdiction and there is no adequate remedy by appeal; 2) outside its statutory authority; or 3) within its jurisdiction but erroneously. In the last category, the petitioner must also demonstrate that there is no adequate remedy by appeal and irreparable injury or great injustice will result without the writ [citation omitted].

Id. Just as the writ of *mandamus* is reserved for extraordinary circumstances, so too is the writ of *habeas corpus*. It ““is available only when relief by the usual legal processes is inadequate.”” *Bryant v. Howell*, 170 S.W.3d 421, 423 (Ky.App. 2005) (quoting *Gray v. Wingo*, 423 S.W.2d 517, 519 (Ky. 1968)).

Brown did not explain to the Franklin Circuit Court then, nor does he offer to this Court now, a reason for why such an extraordinary remedy is necessary to resolve

his claims. After reviewing the documents provided, we hold relief was available to Brown without seeking relief in the Franklin Circuit Court. Each of Brown's current complaints: (1) that the Pulaski Circuit Court allowed a probation officer, as an agent of the state, to renege on two promises; (2) that no one served Brown with a copy of the revocation motion or notified him of the date of the revocation hearing, the alleged violations, or the Commonwealth's proposed evidence; (3) that the trial court failed to enter sufficient written findings of fact in its probation revocation order; (4) that the trial court failed to specify the evidence upon which it relied and its reasons for revoking Brown's probation; (5) that the revocation order was not entered in Brown's presence; and, (6) that Brown did not receive a copy of the written order revoking probation, could have been addressed to the Pulaski Circuit Court during the probation revocation hearing or via a petition for rehearing. As a third option, Brown could have appealed the Pulaski Circuit Court's December 6, 2002 order of probation revocation directly to this Court by invoking KRS 22A.020(1). He did none of these things and has failed to demonstrate their inadequacy. Therefore, extraordinary relief in the form of a writ of *mandamus* or a writ of *habeas corpus* was unavailable to Brown. Thus, the Franklin Circuit Court correctly dismissed the petition.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Donald R. Brown, *pro se*
Eddyville, Kentucky

BRIEF FOR APPELLEES:

No brief filed.