

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000112-MR

EUGENE WILLIAMS GALL JR.

APPELLANT

v.

APPEAL FROM BOONE CIRCUIT COURT
HONORABLE STEVEN JAEGER, JUDGE
ACTION NO. 78-CR-00097

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: STUMBO AND VANMETER, JUDGES; PAISLEY,¹ SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: Eugene Gall appeals from an order of the Boone Circuit Court which denied his motion made pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. At issue is whether the circuit court abused its discretion in refusing to vacate Gall's October 6, 1978, murder conviction after a federal district court granted his petition for habeas corpus but gave no explicit directive to vacate the conviction.

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

This case has a lengthy procedural history. In 1978, Gall was convicted by a jury of the gruesome murder of Lisa Jansen, a twelve-year-old girl, and sentenced to death. His conviction and sentence were affirmed by the Kentucky Supreme Court. *See Gall v. Commonwealth*, 607 S.W.2d 97 (Ky. 1980) *cert. denied Gall v. Kentucky*, 450 U.S. 989, 101 S.Ct. 1529, 67 L.Ed.2d 824 (1981). The Kentucky Supreme Court also affirmed the trial court's denial of his subsequent motion for post-conviction relief made pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. *See Gall v. Commonwealth*, 702 S.W.2d 37 (Ky. 1985).

In July 1986, Gall sought habeas corpus relief in the United States District Court, Eastern District of Kentucky. *See* 28 U.S.C. § 2254. The district court denied his petition. He thereafter filed an appeal in the Court of Appeals for the Sixth Circuit on April 18, 1991. In a lengthy opinion, filed on October 30, 2000, the Court of Appeals reversed the district court's denial of habeas relief and remanded the case. *Gall v. Parker*, 231 F.3d 265 (6th Cir. 2000).

The primary ground for reversal was the federal appellate court's determination that the Commonwealth had failed to provide sufficient evidence of one of the elements of murder: the absence of extreme emotional disturbance. The court repeatedly stressed that there was "little doubt" that Gall had indeed committed the act of killing the child. "Instead, the central issue contested at trial was his mental state at the time of the killing." *Id.* at 277. The circumstantial evidence against Gall was described as "overwhelming," and the case was described as a "tragedy" in which "a young girl's

life was taken in the most cruel and grisly fashion. It is also evident that Eugene Gall was the man who cut her life short.” *Id.*

Nonetheless, under the operation of double jeopardy, Gall could not be retried for murder.

[D]ouble jeopardy prevents us from ordering a retrial of this case – the prosecution already had one attempt to make its case for murder, and, as explained above, failed to prove an essential element.

Id. at 335-36.

The court expressed grave concerns about the potential consequences of releasing Gall, describing him as “severely mentally ill and highly dangerous” and commenting that “the evidence clearly showed that Gall’s psychotic condition is permanent, and that he would be extremely dangerous to his fellow citizens if released into free society.” *Id.* at 336. The court therefore granted the Commonwealth an opportunity to conduct an involuntary hospitalization proceeding prior to Gall’s release.

On remand, Gall moved the federal district court to enter a judgment implementing the appellate court’s opinion and judgment. He tendered a proposed order with his motion which contained the following provision:

Petitioner’s conviction for murder and sentence of death, pursuant to the October 6, 1978 Final Judgment of the Boone Circuit Court, Indictment No. 78-CR-097, are unconstitutional and are VACATED[.]

It is highly significant for purposes of the present appeal that the district court chose **not** to include this language in its order granting habeas relief to Gall.

Instead, its judgment of August 15, 2001, stated as follows:

Pursuant to the opinion and judgment of the United States Court of Appeals for the Sixth Circuit issued in this case on October 30, 2000, the petition for writ of habeas corpus under 28 U.S.C. Section 2254 regarding the petitioner's judgment of conviction for the murder of Lisa Jansen in the Circuit Court of Boone County, Kentucky, is hereby GRANTED, and the Commonwealth of Kentucky shall discharge petitioner from custody under that judgment within ninety(90) days of the entry of judgment in this case.

The petitioner's release from state custody under that judgment is subject to the condition that the Commonwealth of Kentucky may retain custody of petitioner for an additional 30 days hereafter if it elects to initiate civil commitment proceedings against the petitioner under KRS Chapter 202A within that time.

The Commonwealth chose not to conduct involuntary hospitalization proceedings. Gall was released from custody in Kentucky and extradited to Ohio to serve sentences for rape, attempted rape, and aggravated robbery convictions. He appealed the district court judgment, arguing that the opinion of the appellate court had mandated an involuntary hospitalization proceeding. On appeal, the Sixth Circuit Court of Appeals affirmed the judgment of the district court, ruling that it had not directed that the state **must** provide Gall with an involuntary commitment proceeding. *See Gall v. Scroggy*, 69 Fed.Appx. 251, 254 (6th Cir. 2003) (*unpublished*).

Gall filed the motion which is the subject of the present appeal in Boone Circuit Court on May 18, 2004. Gall argued that his judgment of conviction had to be

vacated in order to comport with the ruling of the Sixth Circuit Court of Appeals. Relying on *Fay v. Noia*, 372 U.S.391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963), the Commonwealth contended that while a federal habeas court had the power to order the release of a prisoner, it did not have the power to order the alteration of a state court judgment. After conducting a hearing, the circuit court denied Gall's motion on August 23, 2005, and this appeal followed.

CR 60.02(e) permits a court to relieve a party from its final judgment, on the grounds that:

the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application[.]

Any action under CR 60.02 addresses itself to the sound discretion of the court and the exercise of that discretion will not be disturbed on appeal except for abuse.

Richardson v. Brunner, 327 S.W.2d 572, 574 (Ky.1959).

Gall argues that the scope of federal habeas corpus relief extends beyond release from custody to encompass other, broader forms of relief, "as law and justice require." 28 U.S.C.A. § 2243. He contends that his conviction and sentence in Kentucky were obtained in violation of his constitutional rights, and that although he has been released from custody in Kentucky, he continues to suffer from collateral consequences of his conviction which affect his treatment and placement while incarcerated in Ohio.

The Commonwealth argues that the federal district court did not possess the authority to vacate Gall's conviction, and that Gall had failed to plead the issue of the collateral consequences with sufficient specificity .

Both Gall and the Commonwealth have grappled with the implications of a recent Sixth Circuit case, *Gentry v. Deuth*, 456 F.3d 687 (6th Cir. 2006) *cert. denied* 127 S.Ct. 838, 166 L.Ed.2d 667 (2006), which delineates the parameters of federal jurisdiction in habeas corpus proceedings. Gentry, the defendant, was granted a conditional writ of habeas corpus, permitting the Commonwealth to retry her on various criminal charges. While her petition was pending she was released from prison. She thereafter filed a motion asking the federal district court to enforce its judgment by voiding her conviction so that she would not face any collateral consequences (such as the loss of the right to vote, hold public office and serve on a jury) as a result of having been convicted of a felony. The district court granted her motion and the Commonwealth appealed. The Sixth Circuit held that the district court possessed jurisdiction over Gentry's motion to enforce, and that it possessed the authority to nullify her conviction.

As *Gentry* makes clear, the federal district court in Gall's case undoubtedly had the authority to order his conviction vacated. Furthermore, collateral consequences are presumed to flow from a criminal conviction and need not be pleaded with specificity.

However, although the federal district court undoubtedly had the jurisdiction to order Gall's conviction vacated, the record indicates that it chose not to do

so. As we have already noted, Gall submitted a proposed order that included a provision vacating his conviction. The federal district court rejected the wording of Gall's order and declined to include the provision in its judgment. Gall's subsequent appeal of that district court order never raised this issue, instead focusing exclusively on whether the involuntary hospitalization proceeding was mandatory.

We have not been made aware of any authority supporting the proposition that state courts must go **beyond** the express orders of federal courts when granting relief under the writ of habeas corpus. It was not an abuse of discretion for the circuit court to choose to remain within the specific confines of the federal district court order.

Gall has also argued that if his conviction is not vacated, the Commonwealth will in effect be acting ultra vires by obtaining a criminal conviction in violation of our Constitution, thereby necessitating further intervention by the federal court. As we have explained, however, the circuit court followed the specific directive issuing from the federal court – this is clearly distinguishable from the situation in *Gentry* where the Commonwealth appealed a **federal** order nullifying a conviction. There is no federal judgment in existence ordering the nullification of Gall's conviction.

There are also broader issues of justice at play here. The Sixth Circuit Court of Appeals reversed the denial of Gall's petition with some reluctance, due to safety concerns. In its discussion, the Court observed that Gall could not be kept incarcerated in Kentucky because he had already served the sentence for the lesser-included offense of manslaughter:

Without that element [absence of extreme emotional disturbance] proved, **Gall's conviction would have been for manslaughter** pursuant to Ky.Rev.Stat.Ann. § 507.030(1)(b), which carried a maximum jail term of twenty years – a length of time he has already served.

If our state court vacates Gall's conviction for murder, he would in effect be relieved of all collateral consequences, including those he would have suffered under a manslaughter conviction – a conviction which the federal court found **was** fully supported by the evidence offered at his trial. Under the terms of CR 60.02, “a court may, **upon such terms as are just**, relieve a party or his legal representative from its final judgment[.]” We are not persuaded that the circuit court erred in determining that such a result would not be just in this case.

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

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT
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