

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER SESSION, 1994

FILED

October 16, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE)
)
APPELLANT)
)
)
V.)
)
)
OSCAR D. PATTERSON)
)
APPELLEE)

NO. 03C01-9401-CR-00025
ANDERSON COUNTY
HON. JAMES B. SCOTT, JUDGE
(Habeas Corpus)

FOR THE APPELLANT:

FOR THE APPELLEE:

Charles W. Burson
Attorney General

Merrilyn Feirman
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 372430-0493

James N. Ramsey
District Attorney General

Jan Hicks
Asst. District Attorney General
Rm. 126, Anderson County Courthouse
Clinton, TN 37716

Katherine J. Kroeger
Assistant Public Defender
101 South Main Street
Clinton, TN 37716

AFFIRMED

OPINION FILED: _____

JERRY SCOTT, PRESIDING JUDGE

OPINION

In the Trial Justice Court of Anderson County, the defendant entered his plea of guilty to the offense of driving under the influence of an intoxicant, fourth offense. He received a sentence of eleven months and twenty-nine days and a \$1,000.00 fine. All but 120 days of his sentence was suspended and he was placed on probation.

On October 20, 1991, the defendant was to report to the Anderson County Jail to begin serving his sentence and he reported that day. However, due to crowded conditions at the jail, the defendant was turned away and told to return on December 20, 1991. On that day he was again turned away and told to report at a later date. This happened over and over at least eight times after the defendant's initial attempt to serve his sentence.

On August 16, 1993, the defendant filed a motion in the Trial Justice Court to void or vacate the jail sentence and that motion was denied. Subsequently he filed a petition for the writ of habeas corpus, claiming that the Trial Justice Court had no jurisdiction or authority to confine him for the 120 days because his sentence had expired one year from the date of his sentencing. The judge of the Criminal Court of Anderson County found that indeed the Trial Justice Court lacked jurisdiction to incarcerate the defendant and that his sentence had expired. From that decision, the state has appealed.

This precise issue has already been addressed by this Court in State of Tennessee v. David Wayne Walker and Neely Lenard Love, Tennessee Criminal Appeals, opinion filed at Jackson, October 20, 1993. Like the defendant in this case, Messrs. Walker and Love had entered pleas of guilty of DUI and each reported to the Sheriff to serve his sentence. Also, like this defendant, each was told that there was no space available in the county jail and was turned away. In their cases, the sheriff placed them on a waiting list. Each defendant

"innovatively assert(ed) that his sentence 'had expired' before he was ordered to report to confinement, thereby entitling him to be discharged." Like this defendant, they argued that upon the expiration of eleven months and twenty-nine days from the date of sentencing, there was no authority to confine them. This Court noted that their theory was an offer or attempt to serve the sentence was "tantamount to actual service," since the failure of the criminal justice system to have space for them was in no way attributable to the defendants.

In holding that the defendants' sentences had not expired, this Court relied on Tenn. Code Ann. § 40-23-103, which provides as follows:

It is the duty of the sheriff in whose custody the defendant is at the rendition of the judgment, or afterwards legally comes, to execute the judgment of imprisonment by committing the defendant, as soon as possible, to jail, or to the warden of the penitentiary, according to the exigency of the writ.

In Walker and Love, this Court noted that the qualifying phrase "as soon as possible" "means something." The Court went on to note that in State v. Bomar, 211 Tenn. 420, 365 S.W.2d 295, 297 (1963), our Supreme Court held that the mere expiration of time without confinement is not an execution of a sentence and that a sentence commences on the day that the defendant legally comes into the custody of the sheriff for the execution of a judgment of imprisonment. State v. Brady, 671 S.W.2d 863, 864 (Tenn.Crim.App. 1984); Tenn. Code Ann. § 40-23-101(a).

However compelling the logic in this Court's interpretation of the law in State v. Walker and Love, the Tennessee Supreme Court has now reversed this Court in that case and dismissed the prosecution. State v. Walker, ____ S.W.2d ____ (Tenn. 1995), opinion filed at Jackson, August 14, 1995. Our Supreme Court held the sheriff is required to commit a defendant as soon as possible and to convey prisoners to the nearest jail sufficient for their safekeeping "when the jail

of his county is insufficient for the safekeeping of a prisoner." Tenn. Code Ann. § 41-4-121(a). Since the sheriff in Walker did not commit the defendants to jail as soon as possible, the Supreme Court held their sentences had expired.

The Supreme Court held:

(W)here persons under a criminal sentence immediately present themselves to the appropriate authorities for incarceration and are turned away the sentence in each case shall begin to run when the judgment of conviction becomes final or the prisoner is actually incarcerated, whichever is earlier.

Like the Defendants in Walker and Love, this defendant has never "legally come into the custody of the sheriff for execution of the judgment of imprisonment," but the sentence is still no longer a valid obligation which he must meet and serve, since eleven months and twenty days have long since passed since he presented himself for incarceration. The defendant now has no obligation to serve any of his sentence and cannot ever be incarcerated for this offense.

Therefore, the judgment of the criminal court granting the writ of habeas corpus is affirmed.

JERRY SCOTT, PRESIDING JUDGE

CONCUR:

PENNY J. WHITE, JUDGE

DAVID G. HAYES, JUDGE