

SUPREME COURT OF KENTUCKY

Hidalgo v. Commonwealth

290 S.W.3d 56 (Ky. 2009) · No. Nos. 2008-SC-000429-MR, 2008-SC-000518-MR · Decided September 11, 2009

SUMMARY

The Supreme Court of Kentucky affirmed a writ of prohibition preventing a circuit court from conducting a sua sponte shock-probation hearing. The court held that KRS 439.265 requires a defendant to file a motion for shock probation and that, because no qualifying motion was filed, the circuit court lacked jurisdiction to order or consider the hearing. The court also distinguished shock probation from ordinary probation and held that accepting the plea agreement barred the trial court from circumventing its terms.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Cunningham; Cunningham
JURISDICTION	Kentucky
DECIDED	September 11, 2009
DOCKET	Nos. 2008-SC-000429-MR, 2008-SC-000518-MR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Kentucky Court of Appeals' grant of a writ of prohibition preventing the Jefferson Circuit Court from conducting a sua sponte shock-probation hearing; the Jefferson Circuit Court judge filed a cross-appeal.
STANDARD OF REVIEW	De novo review applies to a writ-of-prohibition decision when the alleged error concerns the lower court's acting outside its jurisdiction, because jurisdiction is generally a question of law.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential.
PARTIES	Dayron Castellanos Hidalgo, a/k/a Dayron Castellanos, Hon. A.C. McCay Chauvin, Judge, Jefferson Circuit Court, cross-appellant v. Commonwealth of Kentucky, et al.

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QUESTIONS PRESENTED

1. Whether a circuit court may sua sponte conduct or schedule a hearing on shock probation when the defendant has not filed a motion for shock probation under KRS 439.265(1).
2. Whether the Commonwealth was entitled to a writ of prohibition because the circuit court was acting beyond its jurisdiction.

HOLDINGS

1. KRS 439.265(1) requires the defendant to make a motion for shock probation, and the circuit court lacks jurisdiction to order a shock-probation hearing or consider shock probation without such a motion.
2. A writ of prohibition was appropriate because the circuit court was acting beyond its jurisdiction and the proceeding violated the statutory limits governing shock probation.
3. By accepting the plea agreement, the circuit court could not circumvent its terms through its own actions.

KEY QUOTATIONS

“Shock probation” is purely a creature of statute.” (290 S.W.3d at 58)

“The plain language of KRS 439.265(1) requires the defendant to make a motion for shock probation.” (290 S.W.3d at 58)

“Because Appellant did not file a motion pursuant to KRS 439.265, and indeed could not as part of his plea agreement, the circuit court lacked jurisdiction to order a hearing or consider shock probation.” (290 S.W.3d at 59)

FACTUAL BACKGROUND

Hidalgo and a co-defendant robbed a Cash Express business with a BB gun, and Hidalgo was indicted for first-degree robbery. During plea negotiations, the Commonwealth offered to amend the charge to second-degree robbery if Hidalgo agreed not to seek probation or shock probation. After accepting the plea, the circuit court denied probation but considered and scheduled a shock-probation hearing on its own motion, despite Hidalgo's having filed no motion for shock probation.

PROCEDURAL HISTORY

Hidalgo pleaded guilty after the Commonwealth agreed to amend the charge to second-degree robbery in exchange for his agreement not to seek probation or shock probation. After the circuit court denied probation but contemplated shock probation and later scheduled a hearing on its own motion, the Commonwealth sought a

writ of prohibition. The Kentucky Court of Appeals granted the writ, and Hidalgo appealed to the Supreme Court of Kentucky; Judge Chauvin cross-appealed.

DISPOSITION

affirmed

CASES CITED

- Chamblee v. Rose, 249 S.W.2d 775, 776 (Ky. 1952)
- Hoskins v. Maricle, 150 S.W.3d 1, 10 (Ky. 2004)
- Grange Mutual Insurance Co. v. Trude, 151 S.W.3d 803, 810 (Ky. 2004)
- Commonwealth v. Gross, 936 S.W.2d 85, 87 (Ky. 1996)
- Corns v. Transportation Cabinet, Department of Highways, Commonwealth of Kentucky, 814 S.W.2d 574, 578 (Ky. 1991)

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