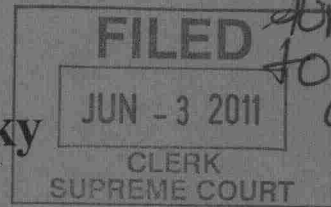


Supreme Court of Kentucky

No. 2010-SC-326-D



COMMONWEALTH OF KENTUCKY

APPELLANT

v.

Appeal from Logan Circuit Court

Hon. Tyler Gill, Judge

Indictment No. 00-CR-126

JAMES W. STEADMAN

APPELLEE

Brief for the Commonwealth

Submitted by,

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CERTIFICATE OF SERVICE

I certify that the record on appeal has been returned to the Clerk of this Court and that a copy of the Brief for the Commonwealth has been mailed this 2nd day of June, 2011, to Hon. Tyler Gill, Judge, Logan Circuit Court, Courthouse, 200 West 4th Street, P. O. Box 667, Russellville, Ky. 42276-0667; Hon. Susan Jackson Balliet, Dept. of Public Advocacy, 100 Fair Oaks Lane, Suite 302, Frankfort, Ky. 40601, counsel for appellee; Mr. James W. Steadman, *pro se*, 4658 South Wilson Rd., Elizabethtown, Ky. 42701; and via e-mail to Hon. Gail Guiling, Commonwealth's Attorney.

Todd D. Ferguson

Assistant Attorney General

INTRODUCTION

James Steadman was convicted, in 2007, of Theft by Deception Over \$300 and Persistent Felony Offender in the Second Degree and was sentenced to eight years imprisonment. Whether the trial court retained jurisdiction to order restitution is the sole issue involved in this grant of discretionary review.

STATEMENT CONCERNING ORAL ARGUMENT

The Commonwealth does not believe that oral argument is necessary in this case, but is happy to present oral argument to this Court, if the Court feels it would help with the resolution of the issue.

STATEMENT OF POINTS AND AUTHORITIES

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STATEMENT OF THE CASE

On August 4, 2000, James Steadman (hereinafter Steadman) was indicted for theft by deception over \$300. (Transcript of Record, hereinafter TR, 1.) A subsequent indictment was entered on July 7, 2005, for theft by deception over \$300 and persistent felony offender in the first degree. (TR 80.) Ultimately, after a jury trial, Steadman was convicted, on May 29, 2007, of theft by deception over \$300 and persistent felony offender in the second degree and sentenced to eight years imprisonment. (TR 653, 689.)

The facts pertaining to the issue presented are as follows. The Commonwealth filed notice that it was seeking restitution on May 16, 2007. (TR 633.) At the sentencing hearing, which was held on May 17, 2007, the trial court acknowledged that it was going to order restitution and was required to order restitution. (VR No. 6 of 6, hereinafter VR No. 6; 5/17/07; 10:14:00.) The trial court sentenced Steadman and then took up the issue of restitution. The Commonwealth presented its restitution request to the court, stated that it had a witness present to testify as to restitution, and Steadman responded to the restitution request and requested a hearing on certain amounts, but conceded that he owed at least \$3,125.00. (VR No. 6; 5/17/07; 10:15:47-20:20.) The trial court stated that it would set a hearing on restitution and Steadman agreed, and the trial court said that testimony would be required to justify the restitution. (VR No. 6; 5/17/07; 10:23:40, 10:24:40.) The trial court that same day, May 17, 2007, entered an order setting a restitution hearing for June 8, 2007. (TR 640.) Several days later, on May 29, 2007, the Final Judgment/Sentence of Imprisonment was entered. (TR 653.) On June 8, 2007, the restitution hearing was held, and an order was entered five days later. (TR 656, 657.)

The notice of appeal for Steadman's case was filed of record on June 20, 2007.

On appeal, Steadman argued that the trial court lost jurisdiction to enter a restitution order ten days after judgment was entered. The Commonwealth countered that Steadman had waived any such argument by consenting to a restitution hearing after final sentencing. The Court of Appeals held that subject matter jurisdiction cannot be waived, and the trial court lost jurisdiction ten days after final judgment was entered. (Opinion pp. 15-17.) The Commonwealth requested review by this Court, which was granted, on the question of whether the Court of Appeals confused general subject matter jurisdiction, which cannot be waived, with jurisdiction over aspects of a particular case, which should be subject to waiver by a defendant?

Additional facts shall be developed, as needed, in the Argument section of this brief.

ARGUMENT

I.

THE TRIAL COURT HAD GENERAL SUBJECT MATTER JURISDICTION OVER STEADMAN'S CASE, AND SO STEADMAN'S CONSENT TO A DELAY IN THE RESTITUTION HEARING BEYOND FINAL SENTENCING WAS A VALID WAIVER OF HIS RIGHT TO COMPLAIN ABOUT THE TIMELINESS OF THE HEARING AND SUBSEQUENT ORDER OF RESTITUTION.

Unquestionably the trial court had subject matter jurisdiction over Steadman's criminal case. The question then becomes whether the trial court could retain jurisdiction for a few days after Final Judgment/Sentence of Imprisonment was entered, with

Steadman's consent, to conduct a hearing on the question of the amount of restitution. The Commonwealth believes this case presents a common problem in our court system: confusion between the concept of general subject matter jurisdiction, which cannot be waived by a defendant, and more particular jurisdiction over a particular case, which is subject to waiver by a defendant.

As set out in the Statement of the Case: the Commonwealth filed notice that it was seeking restitution the day before the sentencing hearing; the trial court acknowledged, at the sentencing hearing, that it was going to order restitution and was required to order restitution; the trial court sentenced Steadman and then took up the issue of restitution; the Commonwealth presented its restitution request to the court, stated that it had a witness present to testify as to restitution, and Steadman responded to the restitution request and requested a hearing on certain amounts, but conceded that he owed at least \$3,125.00; the trial court stated that it would set a hearing on restitution and Steadman agreed, and the trial court said that testimony would be required to justify the restitution; the trial court that same day, May 17, 2007, entered an order setting a restitution hearing for June 8, 2007; several days later, on May 29, 2007, the Final Judgment/Sentence of Imprisonment was entered; on June 8, 2007, the restitution hearing was held, and an order was entered five days later; the notice of appeal for Steadman's case was filed of record on June 20, 2007.

It is the Commonwealth's position that the trial court retained jurisdiction to hold a restitution hearing and enter a restitution order under KRS 532.033. The statute clearly recognizes that restitution will be an ongoing process, much like probation, and grants the

court jurisdiction to monitor the process. Here, Steadman agreed to a hearing date outside of the final sentencing hearing - it was for Steadman's benefit, the Commonwealth was ready to proceed - and that should be considered a waiver of the jurisdiction argument. The trial court specifically retained jurisdiction to consider the question of restitution, which it began to examine at the sentencing hearing, but needed a separate hearing where testimony could be obtained. Steadman should not be allowed to cut off jurisdiction to consider the question of restitution when he has agreed that a hearing is necessary and consented to a short delay. *Cf.*, Schooley v. Commonwealth, Ky. App., 556 S.W.2d 912, 915-17 (1977) (The Court discussed the meaning of subject matter jurisdiction and noted that if a court has general jurisdiction of the subject matter of the case, then whether a court has obtained jurisdiction over a particular defendant becomes a matter of due process or fair treatment. The Court stated, that looked at in that manner, then jurisdiction could be waived.); Nordike v. Nordike, 231 S.W.3d 733, 737-38 (Ky., 2007) (Discussing the differences between personal jurisdiction, subject matter jurisdiction, and jurisdiction over a particular case.); Commonwealth v. Thompson, 697 S.W.2d 143, 144 (Ky., 1985) ("[T]he proceedings in juvenile court were not jurisdictional matters but that any 'invalidity would stem from its failure to afford due process and fair treatment....'" (Citation omitted.)).

The Court of Appeals relied upon Rollins v. Commonwealth, 294 S.W.3d 463, 466 (Ky.App., 2009) to support its ruling that the trial court lost all jurisdiction over this case ten days after judgment was entered. The problem with this reliance is that Rollins is factually far different from this case. In Rollins, the Commonwealth waited seven years

after judgment was entered, until after Rollins had served his sentence, to request the trial court to set the restitution amount. *Id.*, at 464. Here, the trial court specifically retained jurisdiction of the case a few days in order for Steadman to be ready to contest the restitution amount at an evidentiary hearing. The two cases simply are not analogous. The Commonwealth concedes that this case would have a different result if the trial court had not specifically retained jurisdiction and if the Commonwealth had been late in asking the trial court to set restitution, but that is not the situation here. The restitution order in this case should be affirmed.

CONCLUSION

Based upon the foregoing, the Commonwealth respectfully urges this Court to reverse the Court of Appeals concerning restitution and affirm the judgment of the Logan Circuit Court.

Respectfully submitted,

JACK CONWAY

Attorney General of Kentucky

A handwritten signature in black ink, appearing to read "Todd D. Ferguson", written in a cursive style.

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