IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1999 SESSION

STATE OF TENNESSEE,	*	
Appellee,	*	C.C.A. No. 03C01-9811-CC-00404
v.	*	Anderson County
WILLIAM H. MOSS,	*	Honorable James B. Scott, Jr., Judge
Appellant.	*	(DUI)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

ALAN E. GLENN, JUDGE

O P I N I O N

The defendant, William H. Moss, was convicted pursuant to a guilty plea entered on March 17, 1998, in the Criminal Court for Anderson County of a Class A misdemeanor offense of DUI, third offense. For this conviction, he was sentenced to eleven months and twenty-nine days, to serve 120 days in the Anderson County Jail with the remaining portion of his sentence to be suspended. The defendant appeals as of right from an order entered by the Criminal Court for Anderson County on November 30, 1998, requiring that he be reincarcerated to serve the remainder of his 120-day jail sentence.

The defendant presents two issues for our review:

I. Whether reincarceration of defendant is fundamentally unfair; and

II. Whether the State of Tennessee is responsible for payment of defendant's medical bills while on furlough for an emergency appendectomy.

We affirm the judgment of the trial court.

FACTS

The facts of this case are not in controversy. The defendant reported to the Anderson County Jail on April 17, 1998, to serve his 120-day sentence. Within approximately two weeks, he suffered a severe attack of appendicitis. The sheriff, without prior notice to the State, the defendant, or defense counsel, contacted a judge who granted a furlough based on a medical emergency. The only written record of the granting of a furlough was a notation attached to the jail docket. A guard accompanied the defendant to the hospital where, once the defendant's condition was diagnosed and the need for surgery determined, the guard left the hospital. The defendant successfully underwent an appendectomy and was released approximately one week later. The defendant was not contacted by anyone from the jail or any other official concerning the furlough or any particular date for his return to jail. The defendant went home, continued to recuperate, and started a new job.

Some months later, the defendant told his probation officer that he had served only twelve days of his 120-day sentence. The probation officer relayed this information to the prosecutor. Consequently, a hearing was held to determine the defendant's status. An order to serve sentence was issued by the trial court on November 30, 1998, requiring that the defendant be reincarcerated to serve the remaining days of his sentence. The trial

court allowed credit for the seven days the defendant was hospitalized.

ANALYSIS

I. Due Process Violation

The defendant contends that reincarceration is a violation of his due process rights.

Tennessee Code Annotated § 40-35-302(b) articulates the basic principle that a defendant must be confined in prison for the term of the sentence.[1] **This principle is firmly rooted in the common law. In 1888, our supreme court held that a defendant was not entitled to credit for the time he was illegally discharged and that the "time elapsing until reimprisonment cannot be counted as time in prison." State ex rel. Johnston v. McClellan, 87 Tenn. 52, 9 S.W. 233, 234 (Tenn. 1888). As courts have dealt with this principle in practice, judicially created exceptions have developed that looked to the totality of the circumstances to determine whether reincarceration was fundamentally fair in specific cases. See Johnson v. Williford, 682 F.2d 868, 872 (9th Cir. 1982) ("Even convicted criminals are entitled to be treated by their government in a fair and straightforward manner."). The doctrines relied upon by the courts in reviewing reincarceration of prisoners include: (1) governmental waiver of the right to recommit; and (2) equitable estoppel.**[2]

A. Doctrine of Governmental Waiver

For the doctrine of governmental waiver to apply, the government must have waived its right to reincarcerate a prisoner because "its agents' actions are so affirmatively improper or grossly negligent that it would be unequivocally inconsistent with fundamental principles of liberty and justice to require a legal sentence to be served in its aftermath." State v. Chapman, 977 S.W.2d 122, 126 (Tenn. Crim. App. 1997), perm. app. denied (Tenn. 1998) (quoting Green v. Christiansen, 732 F.2d 1397, 1399 (9th Cir. 1984)) (internal

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[1]The relevant language is:

> In imposing a misdemeanor sentence, the court shall fix a specific number of months, days or hours and the defendant shall be responsible for the entire sentence undiminished by sentence credits of any sort except for credits authorized by § 40-23-101, relative to pretrial jail credit, or §§ 33-5-306 and 33-7-102, relative to mental examinations and treatment, and credits awarded in accordance with either, but not both, § 41-2-111 or § 41-2-147. The court shall impose a sentence consistent with the purposes and principles of this chapter.

Tenn. Code Ann. § 40-35-302(b) (1997).

[2]As the defendant acknowledges, Tennessee law does not permit the application of the doctrine of credit for time at liberty. **See State v. Chapman, 977 S.W.2d 122, 127 (Tenn. Crim. App. 1997), perm. app. denied (Tenn. 1998).**

quotations omitted). More than a mistake by an administrator is required. "There must be no fault by the defendant, there must be more than simple negligence by the government, and the defendant's reincarceration must be 'unequivocally inconsistent with fundamental principles of liberty and justice.'" Id. (quoting United States v. Merritt, 478 F.Supp. 804, 807 (D.D.C. 1979) (internal quotations omitted). Therefore, "when reincarceration is fundamentally unfair, a due process violation occurs." Id.

According to Tenn. Code Ann. § 40-35-316(a), the court has jurisdiction to grant furloughs for "any medical, penological, rehabilitative or humane reason."[3] **In this case, the defendant was placed on medical furlough because of a life-threatening medical emergency. Defendant argues that a number of defects in the validity of the furlough granted amount to a waiver of the government's right to reincarcerate him: he did not request the furlough; no furlough order was ever entered; his attorney was not notified; and the real reason for the furlough was for the county to avoid financial liability. We conclude that the sheriff's actions in seeking an emergency furlough for the defendant, even if, as the defendant alleges, for the purpose of avoiding financial liability for his medical expenses, are far from being so affirmatively improper or grossly negligent that it would be an affront to justice to require the defendant to serve a legal sentence in the face of such actions.**

B. Doctrine of Equitable Estoppel

The doctrine of equitable estoppel has been developed "to prevent recommitment 'where justice and fair play require it.'" Chapman, 977 S.W.2d at 126 (quoting Johnson v. Williford, 682 F.2d 868, 871 (9th Cir. 1982)). The following four elements must be present for equitable estoppel to be invoked:

1. The party to be estopped must know the facts;
2. The party to be estopped must intend that his conduct shall be acted upon or must act so that the party asserting the estoppel has a right to believe it is so intended;
3. The party asserting the estoppel must be ignorant of the facts; and
4. The party asserting the estoppel must rely on the conduct of the party to be estopped to his detriment.

See id. The sheriff was aware of the medical furlough and the defendant was not; but, the fact that the guard left the hospital when the defendant underwent emergency surgery or

[3]We note the relationship between § 40-35-316(a) and § 55-10-401, the statute under which this defendant was convicted. The authority of the judge to order a furlough in this case was not raised by the defendant, and even had it been raised, that determination would have no impact on the outcome of this case.

failed to tell the defendant that he would have to return to jail are not facts that the defendant had a right to believe were intended to absolve him of serving the remaining days of his mandatory sentence. The defendant has suffered no detriment and has, in fact, received credit for the time spent in the hospital.[4] **The elements of equitable estoppel have not been met, and the doctrine is, therefore, not warranted in this case.**

II. Liability for Medical Expenses

The trial court determined that the issue of liability of the county for some $6,000 in defendant's medical bills was not properly before the court. We agree that questions of county liability were not properly before the trial court.

The defendant also argues that the State should be liable for his medical costs.[5] **Defendant argues specifically that Tenn. Code Ann. § 41-21-227 applies to him. That section states in part:**

> **(a) The department of correction is hereby authorized and empowered to grant furloughs to the inmates in the adult correction institutions administered and operated by the department.**

This section does not apply to the defendant as his sentence is not to be served in the Tennessee Department of Correction; he is serving a misdemeanor conviction in the Anderson County Jail.

Tennessee Code Annotated § 41-4-115 is relevant and states, in part:

> **(a) The county legislative bodies alone have the power, and it is their duty, to provide medical attendance upon all prisoners confined in the jail in their respective counties.**
>
> **(b) The state shall be liable for expenses incurred**

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[4]The doctrine of equitable estoppel was also denied application in **Chapman under similar circumstances where the pregnant female prisoner went into labor and was transported to a neighboring county hospital because of complications. In Chapman, 977 S.W.2d at 126, this court concluded the following:**

> **When the defendant was released from custody in order to be transported to a hospital in a neighboring county, she was not told anything regarding serving the remainder of her sentence. In fact, she admitted that she expected to be released to be able to obtain medical care. The defendant has not suffered any injury through reliance on any statement or conduct of the sheriff's department.**

[5]Defendant relies on **Bryson v. State, 793 S.W.2d 252, 254 (Tenn. 1990), for the proposition that "a prisoner on a short furlough from a state institution remains in the custody of the State and is an inmate for the purpose of medical treatment."**

> **from emergency hospitalization and medical treatment rendered to any state prisoner incarcerated in a county jail or workhouse, provided such prisoner is admitted to the hospital.**

Section (b) has been interpreted as intending "to establish state liability for qualifying medical expenses rendered to prisoners who were already convicted of an offense punishable by death or confinement in the state penitentiary." State v. William Cox, No. 02A01-9806-CR-00154, 1999 WL 285888, at *5 (Tenn. App., Jackson, May 10, 1999). Therefore, Tenn. Code Ann. § 41-4-115(b) also does not apply to the defendant. This issue is without merit.

CONCLUSION

We affirm the order of the trial court instructing the defendant to return to the Anderson County Jail to serve the remainder of his mandatory 120-day sentence. We also affirm the trial court's determination that the issue of county liability for defendant's medical expenses was not properly before that court. We hold further that the State has no liability for the medical expenses incurred by the defendant while on furlough for an emergency appendectomy.

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ALAN E. GLENN, JUDGE

CONCUR:

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DAVID G. HAYES, JUDGE

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JOE H. WALKER, III, SPECIAL JUDGE