

RENDERED: June 26, 1998; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 96-CA-2114-MR

RUSSELL CLAXON

APPELLANT

v.

APPEAL FROM HENRY CIRCUIT COURT
HONORABLE DENNIS A. FRITZ, JUDGE
ACTION NO. 96-CI-000143

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

* * *

BEFORE: GUIDUGLI, KNOX, AND MILLER, JUDGES.

KNOX, JUDGE: Appellant, Russell Claxon, takes this appeal from the decision of the Henry Circuit Court denying his motion to convert misdemeanor fines to a definite jail term to run concurrently with an indeterminate prison term.

On February 29, 1992, appellant received a traffic citation in Henry County for speeding. The trial court found that appellant was charged with travelling 83 miles per hour in a 65-mile-per-hour zone. The trial court noted that the citation was prepayable, and provided for a fine of \$78.50. In July 1993, appellant was convicted in Jefferson Circuit Court on seven

counts of criminal possession of a forged instrument, second-degree, and three counts of promoting prostitution, second-degree. He was sentenced to five years on those charges, and was transferred to the custody of the department of corrections in March 1993. In September 1995, he filed a motion to convert his misdemeanor fines to a definite jail term, taking the position that KRS 534.060 authorizes the court to convert a fine into a jail term. The trial court, in denying appellant's motion, ruled that since appellant had not entered a plea of guilty to the traffic offense, the court could not convert his fine to jail time. In addition, the court ruled that the provisions of the Kentucky Penal Code permitting the conversion of misdemeanor time to jail time had no applicability to the conversion of traffic fines to jail time.

There are some confusing procedural aspects to this matter. The record reflects that appellant, apparently on September 8, 1995, sought to file with the Henry District Court a motion to convert misdemeanor fines to a definite jail term which was to run concurrently with an indeterminate term. Appellant alleges that the Henry District Court Clerk responded that his license was suspended for nonpayment of the traffic fine, and as soon as she received payment she would satisfy appellant's license suspension. Appellant, thereupon, appears to have filed a petition for writ of mandamus in the Henry Circuit Court seeking an order to compel the clerk to file his motion to convert. Subsequently, appellant filed a petition for writ of

mandamus, in this Court, against the trial judge seeking an order compelling him to "file and rule on petitioner's said Petition." In July 1996, this Court ruled upon appellant's petition for mandamus against the trial judge, noting that no response had been filed. Specifically, this Court ordered the trial judge to rule on "the petitioner's pending motion converting misdemeanor fines to a definite jail time within twenty (20) days of the date of the entry of this order."

The trial judge did so. He granted appellant's petition for writ of mandamus and, addressing appellant's motion to convert on the merits, denied that motion. The trial judge concluded that, since appellant had not paid his speeding fine, he had not acknowledged his guilt for that offense, and the court was, therefore, not in a position to enter a ruling on the merits of his motion. The court further ruled that, considering KRS 534.060(2) (the statute relied upon by appellant as authority for the proposition that the court can convert his fines to jail term) has no applicability to Chapter 189 traffic infractions.

KRS 534.060(2) does set forth the circumstances in which nonpayment of fines can be converted into prison or jail sentences. Subsection (2) specifically provides the length of term to which a fine can be converted if it was imposed for the conviction of a felony, misdemeanor, or violation. However, in this case, appellant's fine obligation does not result from the conviction of a felony, misdemeanor, or violation. Rather, the obligation results from a KRS 189.390 traffic infraction.

Appellant's traffic offense was not a "felony" or a "misdemeanor" under Kentucky's Penal Code, nor was it a "violation," defined as "an offense, other than a traffic infraction, for which a sentence to a fine only can be imposed." KRS 500.080(17) (emphasis added). From that, we conclude the trial court was correct in ruling that, considering KRS 534.060(2), appellant's traffic fine cannot be converted into a jail sentence.

For the foregoing reasons, we believe the trial judge was correct that KRS 534.060, specifically subsection (2), does not authorize the relief sought by appellant with respect to the nonpayment of his traffic fine. We also note that appellant properly brought his original motion to convert his fines into jail time in the Henry District Court. We believe the district court is the proper forum for him to pursue any further relief that he might seek in this matter, given that court's jurisdiction over traffic offenses. KRS 24A.110(2).

For the foregoing reasons, we affirm the judgment of the Henry Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Russell David Claxon, Pro Se
LaGrange, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler III
Attorney General

Courtney A. Jones
Assistant Attorney General
Frankfort, Kentucky