

**KENTUCKY SUPREME COURT  
APRIL 2024**

**CRIMINAL LAW:**

**DEMETRIUS ROBERSON V. COMMONWEALTH OF KENTUCKY**

**2022-SC-0158-MR**

**April 18, 2024**

Opinion of the Court by Justice Keller. All sitting. All concur.

A Logan County jury convicted Demetrius Roberson of one count of murder, one count of robbery in the first degree, nine counts of wanton endangerment in the first degree, and one count of attempted murder. On appeal to the Kentucky Supreme Court, Roberson alleged several errors by the trial court including that the trial court erred in excluding hearsay evidence that another man admitted shooting the victim, that the trial court erred in admitting deposition testimony, and that the trial court erroneously failed to sequester the jury during its guilt-phase deliberations.

The Supreme Court affirmed Roberson’s convictions. The Court held that the trial court did not abuse its discretion in excluding the hearsay evidence regarding an alternate perpetrator, as the testimony was prohibited by *Askew v. Commonwealth*, 768 S.W.2d 51 (Ky. 1989). The Court also held that the trial court did not abuse its discretion in admitting deposition testimony despite the witness invoking his Fifth Amendment privilege against self-incrimination to some questions on cross-examination because those questions only went to collateral issues. The Court also held that Roberson waived any objection to the trial court’s failure to sequester the jury; however, the Court did express concern with the trial court’s decision to allow jurors to separate during the lunch break in the middle of guilt-phase deliberations.

**LANCE CONN, ET AL. V. KENTUCKY PAROLE BOARD**

**2022-SC-0198-DG**

**April 18, 2024**

Opinion of the Court by Chief Justice VanMeter. All sitting. Bisig, Conley, Lambert, and Nickell, JJ., concur. Keller, J., concurs in result only by separate opinion in which Thompson, J., joins.

On review from the Court of Appeals’ judgment affirming the Franklin Circuit Court’s summary judgment in favor of the Kentucky Parole Board (the “Board”). The Supreme Court affirmed. The sole issue of the case is whether the Board has the power to issue a serve-out to an inmate who is serving a life sentence and is parole eligible. Every Appellant was duly convicted and sentenced to life

imprisonment by a trial court. Appellants brought this action in Franklin Circuit Court challenging certain administrative regulations of the Board. Among their claims, Appellants alleged that the Board does not have the statutory authority to serve-out a life sentence and that such a practice violates the constitutional separation of powers. The Franklin Circuit Court concluded as a matter of law that the Board was within its statutory authority to issue a serve-out on a life sentence and granted summary judgment to the Board on this lone issue, leaving Appellants' other claims intact. The Kentucky Court of Appeals affirmed the Franklin Circuit Court. The Court of Appeals reasoned that the legislature had not prohibited the Board from authorizing serve-outs on life sentences as previously addressed in *Simmons v. Commonwealth*, 232 S.W.3d 531 (Ky. App. 2007). The Supreme Court holds that our legislature has created clear exceptions in KRS 439.3403 regarding deferral limitations for inmates serving life sentences, and those exceptions allow the Board to order a serve-out to those inmates. The Board does not overstep its authority by ordering serve-outs because the Board is simply making a determination of parole eligibility within the lawfully ordered sentence set by the trial court. This power does not encroach upon the judiciary's sentencing prerogatives, nor can the Court discern any other constitutional infirmity present in the exercise of that power. If the Board does not alter the sentence adjudged by the court, and it follows its own statutory and administrative guidelines, the Board has wide discretion in its decision to grant or deny parole. A serve-out, then, is authorized by the legislature and not constitutionally impermissible. Appellants are each properly subject to the imposition of a serve-out by virtue of their sentence. Accordingly, the Supreme Court affirms the Franklin Circuit Court's judgment as affirmed by the Court of Appeals.

## **ROBERT KEITH WOODALL V. COMMONWEALTH OF KENTUCKY**

**2022-SC-0232-MR**

**April 18, 2024**

Opinion of the Court by Justice Keller. All sitting. All concur. Thompson, J., concurs with separate opinion in which Conley and Lambert, JJ., join.

In 1998, Robert Keith Woodall was sentenced to death for the kidnapping, rape, and murder of a teenage girl. In 2015, Woodall filed a Motion to Vacate the Death Sentence Due to Intellectual Disability, pursuant to Kentucky Rule of Civil Procedure (CR) 60.02, or in the alternative, CR 60.03. The trial court denied his motion without a hearing. The Kentucky Supreme Court reversed and remanded. *See Woodall v. Commonwealth*, 563 S.W.3d 1 (Ky. 2018). On remand, the trial court held an evidentiary hearing and again denied Woodall's motion. Woodall again appealed to the Supreme Court.

Woodall argued that he is intellectually disabled, and therefore the Eighth Amendment to the United States Constitution prohibits his execution. He argued that the trial court's finding that he did not prove by a preponderance

of the evidence that he is intellectually disabled was not supported by substantial evidence. Woodall also argues that the trial court erred in admitting and relying on an expert report generated pursuant to an evaluation of Woodall at the Kentucky Correctional Psychiatric Center (KCPC) in 1998 without requiring that the expert testify at the hearing and be subject to cross-examination. Woodall argued that this violated both his Confrontation Clause rights and his Due Process rights. He further argued that the expert report was not relevant and should have been excluded on that basis as well.

The Supreme Court held that the trial court did not abuse its discretion in determining that the KCPC expert report was sufficiently relevant to warrant admission into evidence. The Court also held that Woodall's Due Process rights were not violated, relying on *Ford v. Wainwright*, 477 U.S. 399 (1986). The Court noted that Woodall was granted funding to hire an expert who opined that he is intellectually disabled and was able to call other witness and cross-examine the witnesses the Commonwealth called. Given all the circumstances, the Court concluded that Woodall had a full and fair opportunity to be heard at his CR 60.02 hearing. The Court also noted that there was no precedent to support extending the Confrontation Clause's protections to a post-conviction collateral attack on a death sentence. Therefore, the Court held that Woodall's Confrontation Clause rights were not violated by the admission of the KCPC expert report without the opportunity to cross-examine the expert. Finally, the Court held that the trial court's factual finding that Woodall did not prove that he is intellectually disabled by a preponderance of the evidence is supported by substantial evidence. Accordingly, the Supreme Court affirmed the trial court.

## **COMMONWEALTH OF KENTUCKY V. RICKY D. ULLMAN, JR.**

**2022-SC-0293-DG**

**April 18, 2024**

Opinion of the Court by Justice Lambert. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. VanMeter, C.J.; Bisig, Conley, and Nickell, JJ., concur. Keller, J., concurs in result only. Thompson, J., not sitting.

Ullman pleaded guilty to three counts of distribution of a matter portraying a sexual performance by a minor. He was sentenced to twelve years imprisonment, probated for five years. Ullman's conditions of probation included completion of a community-based sex offender treatment program (SOTP). The circuit court later revoked his probation for violating several conditions of his probation, including his failure to complete SOTP. Nearly two years after his probation was revoked, Ullman filed a combined CR 60.02 and RCr 11.42 motion for relief. The circuit court granted his CR 60.02 motion based on its finding that participation in an SOTP could not be imposed as a condition of probation because Ullman was not convicted of a "sex crime" as that term is defined by KRS 17.500. The circuit court ordered that Ullman be

released and returned to probation for five years. The Court of Appeals affirmed.

The Supreme Court of Kentucky reversed the Court of Appeals, reinstated the circuit court's revocation order, and remanded for consideration of Ullman's RCr 11.42 claim. The Court first held that Ullman's challenge to his conditions of probation was untimely, as a condition of probation is to be challenged when it is imposed and before an individual's probation is revoked due to a violation of the challenged condition. Ullman's sentence of twelve years, probated for five years, was within the available penalty range for his convictions and did not otherwise violate a sentencing statute. It was therefore not an illegal sentence, which could be challenged at any time. The Court went on to conclude that, in accordance with KRS 533.030, a trial court may impose SOTP as a condition of probation for a defendant that was not convicted of a "sex crime" as defined by KRS 17.500 if the court finds that the condition is reasonably necessary to ensure that the defendant will lead a law-abiding life or will assist him or her in doing so and that the condition is reasonable. The Court declined to address Ullman's argument that the circuit court failed to make the required findings under KRS 439.3106 prior to revoking his probation, as he failed to preserve that issue and did not request review for palpable error. Nevertheless, the Court remanded to the circuit court for a finding concerning whether his revocation hearing counsel's failure to challenge the circuit court's omission under KRS 439.3106 constituted ineffective assistance of counsel per RCr 11.42; a fact-finding court had not addressed the issue because the circuit court granted Ullman relief under CR 60.02.

**ATTORNEY DISCIPLINE:**

**IN RE: GARY ALAN TABLER**

**2024-SC-0027-KB**

**April 18, 2024**

Opinion and order. All sitting. All concur.

The Kentucky Bar Association filed a motion to the Supreme Court seeking the indefinite suspension of Gary Alan Tabler from the practice of law pursuant to SCR 3.167 after Tabler failed to file an answer to a charge against him. The charge related to Tabler's work as the administrator of an estate for ten years. As administrator, Tabler failed to file timely estate inventories and periodic settlements. He also failed to properly distribute estate assets to the heirs. The district court ultimately relieved him of his duties and appointed a public executor. Once removed, Tabler refused to turn over any documentation related to the estate, despite orders from the court that he do so. The public executory finally subpoenaed the estate's bank records and discovered Tabler

had written thirty checks to himself from the estate's bank account amounting to more than \$180,000 in misappropriated funds.

Tabler's counsel initially responded to the bar complaint filed against him by the public administrator. However, Tabler's counsel was later permitted to withdraw from the case. The Office of Bar Counsel filed a petition for a temporary suspension pursuant to SCR 3.165(1)(a) alleging Tabler had improperly used client funds. Tabler attempted to file a response to the Inquiry Commission but was informed he needed to file his response to the Court. He failed to do so. The Supreme Court temporarily suspended Tabler in December 2023.

In October 2023, the Inquiry Commission issued a charge against Tabler for violations of SCR 3.130(1.3) (acting with reasonable diligence), (1.15)(a) (holding property of clients separately from own), (1.16)(d)(protecting client's interests upon termination), and (8.4)(c) (conduct involving dishonesty, fraud, deceit, misrepresentation). Tabler failed to file an answer to the charge. The KBA sought an order indefinitely suspending Tabler from the practice of law and the Supreme Court granted that order.

**IN RE: BRIAN ALLEN LOGAN, ESQ.**

**2024-SC-0052-KB**

**April 18, 2024**

Opinion and order. All sitting. All concur.

The Inquiry Commission of the Kentucky Bar Association petitioned the Supreme Court to enter an order temporarily suspending Brian Allen Logan from the practice of law pursuant to SCR 3.165(1)(a) and (b). The Inquiry Commission asserted there is probable cause to believe Logan was or had been misappropriating funds he held for others to his own use and that his conduct poses a substantial threat of harm to his clients or the public. Logan responded to the petition in partial opposition to the temporary suspension. Logan was named executor of a client's estate. When the client died, Logan promptly filed to probate the will, estimating the value of the estate at \$425,000. The bulk of the estate was to be divided amongst three charities. In total, Logan misappropriated \$416,475 of the estate's assets. Logan failed to file an estate inventory, period settlements, or tax returns, resulting in loss to the estate of an additional \$30,000. Between May 2020 and March 2023, Logan made nine payments to the estate for a total repayment of just over \$10,000. He resigned as executory in August 2023 and the public administrator was appointed to serve as executor of the estate. Logan self-reported to the KBA through counsel his improper conversion of estate funds to his personal use.

The Inquiry Commission issued a three-count complaint for violations of SCR 3.130(1.15) (safekeeping of property), (8.4)(b)(committing a criminal act reflecting adversely on the lawyer's trustworthiness or fitness as a lawyer in other respects), and (8.4)(c) (conduct involving dishonesty, fraud, deceit, misrepresentation). Logan filed a response admitting his conduct violated the relevant rules. He cashed out his retirement plan and made a restitution payment of \$75,000 to the estate. The public administrator prepared an inventory revealing approximately \$275,000 of misappropriated funds remained to be repaid.

The Inquiry Commission filed the underlying petition asserting Logan was or had been misappropriating funds he held for others to his own use or had otherwise been improperly dealing with those funds and that his conduct poses a substantial threat of harm to his clients or the public.

SCR 3.165(1)(a) permits the temporary suspension of an attorney if "[i]t appears that probable cause exists to believe that an attorney is or has been misappropriating funds the attorney holds for others to his/her own use or has been otherwise improperly dealing with said funds." SCR 3.165(1)(b) permits the Inquiry Commission to petition this Court for an order of temporary suspension if "[i]t appears that probable cause exists to believe that an attorney's conduct poses a substantial threat of harm to his clients or to the public." The Court agreed with the Inquiry Commission that probable cause exists to temporarily suspend Logan under SCR 3.165(1) and entered said suspension.