

**KENTUCKY SUPREME COURT
APRIL 2025**

CRIMINAL LAW:

COMMONWEALTH OF KENTUCKY V. DARRYL ELLERY

2023-SC-0228-DG

April 24, 2025

Opinion of the Court by Justice Goodwine. All sitting. Bisig, Keller, and Nickell, JJ., concur. Conley, J., dissents by separate opinion in which Lambert, C.J., and Thompson, J., join.

In a 4-3 opinion authored by Justice Goodwine, the Supreme Court held the circuit court erred in revoking Ellery's probation because it lost jurisdiction to do so. In June 2016, Ellery was sentenced to five years of probation. On January 23, 2017, the circuit court issued an arrest warrant for Ellery for a probation violation. The warrant was served on October 28, 2021. On November 15, 2021, Ellery appeared for a revocation hearing, but the circuit court granted a continuance without entering an order extending Ellery's probation.

On November 22, 2021, the parties reappeared for a revocation hearing. Ellery argued the circuit court could not revoke his probation because the circuit court lost jurisdiction when his original probationary period expired in June 2021, and the court did not enter an order extending his probation at his first court appearance on November 15, 2021. The Commonwealth agreed. The circuit court disagreed and found that because the warrant was issued during the five-year probationary period, jurisdiction continued without any further action by the court. The circuit court revoked Ellery's probation and remanded him to custody to serve his five-year sentence.

The Court of Appeals reversed the revocation order and held the circuit court lost jurisdiction when it failed to enter an order extending his probation at his first court appearance after execution of the arrest warrant. The Commonwealth sought discretionary review. The Supreme Court granted discretionary review and heard oral arguments.

The Court held that although Ellery served out his sentence, the Commonwealth's appeal was not moot under the public interest exception to the mootness doctrine because there is no Supreme Court opinion addressing application of the fugitive tolling doctrine.

The Court declined to adopt the fugitive tolling doctrine because doing so would contravene the express language of KRS 533.020(4) and violate the

separation of powers doctrine. As held in *Commonwealth v. Tapp*, 497 S.W.3d 239 (Ky. 2016), KRS 533.020(4) clearly states that a probationary period that would otherwise automatically expire is extended by a pending arrest warrant until a defendant's first court appearance for a revocation hearing. To extend probation beyond the first court appearance without revoking probation, KRE 533.020(4) requires a "duly entered court order." Because the circuit court failed to enter an order extending Ellery's probation at his first court appearance after the arrest warrant was served, the circuit court lost jurisdiction to revoke Ellery's probation.

ELVIS WYNN V. COMMONWEALTH OF KENTUCKY

2023-SC-0573-MR

April 24, 2025

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

Elvis Wynn was convicted of one count of first-degree bail jumping and one count of being a first-degree persistent felony offender after he failed to appear for an October 2022 hearing where he was to be sentenced for the crime of possession of a firearm by a convicted felon. Wynn received a twenty-year sentence of imprisonment for first degree bail jumping because of his PFO status. Pursuant to KRS 520.070(1), proof that the defendant had been ordered to "appear at a specified time and place in connection with a charge of having committed a felony" is an essential element of first-degree bail jumping. On appeal to the Supreme Court of Kentucky, Wynn challenged his convictions and argued that the trial court had erred by not allowing him to "stipulate" to the fact that he had previously been charged with committing a felony. Instead, the trial court permitted the Commonwealth to introduce a video recording of a prior court appearance wherein Wynn can be seen pleading guilty to the specific charges of possession of a firearm by a convicted felon, operating a motor vehicle under the influence, and being a second-degree persistent felony offender. Wynn also argued that the trial court erred in sentencing him to a twenty-year term of imprisonment that was to run consecutively to an earlier seven-year sentence because his aggregate twenty-seven-year sentence exceeded the twenty-year statutory "sentencing cap" set forth in KRS 532.110(1)(c).

Relying upon its own precedent in *Anderson v. Commonwealth*, 281 S.W.3d 761 (Ky. 2009), the Supreme Court held that the trial court had indeed erred when it admitted the video recording of Wynn's prior court appearance that informed the jury of the specific nature of his prior felony charges. More specifically, the Supreme Court held that the trial court had erred in balancing the recording's probative value against its potential to inspire undue prejudice. KRE 403. Noting the trial court's continuing duty to consider alternative evidence when conducting the KRE 403 balancing test, the Supreme Court reasoned that the

trial court was presented with competing evidence (*i.e.*, Wynn’s admission that he had been charged with a felony) that was equally probative of the fact at issue and lacked the potential to inspire undue prejudice. Although the trial court erred in admitting the Commonwealth’s preferred evidence over Wynn’s competing admission, the Supreme Court held that error was nonetheless harmless. Finally, the Supreme Court held that the statutory sentencing cap codified at KRS 532.110(1)(c) did not necessitate that the trial court impose a lesser sentence for Wynn’s first-degree bail jumping conviction. Rather, the Court held that even though Wynn had previously been sentenced to a seven-year term of imprisonment on account of a prior felony conviction, KRS 532.110(1)(c)’s sentencing cap does not apply to sentences resulting from prior cases (*i.e.*, those sentences resulting from a “previous indictment and trial”). *Johnson v. Commonwealth*, 553 S.W.3d 213, 220 (Ky. 2018). Because Wynn had already been charged, convicted, and sentenced in his prior case before being convicted and sentenced for first-degree bail jumping, KRS 532.110(1)(c) did not require that his two sentences be “capped” at twenty total years. Further, Wynn’s resulting twenty-year sentence for first-degree bail jumping was required to run consecutively to his earlier seven-year sentence in accordance with KRS 533.060(3).

DECLARATORY JUDGMENT:

ERIE INSURANCE EXCHANGE V. MEGAN JOHNSON, ET AL.

2024-SC-0018-DG

April 24, 2025

Opinion of the Court by Justice Thompson. Lambert, C.J.; Bisig, Conley, Keller, Nickell, and Thompson, JJ., sitting. Lambert, C.J., and Conley, J., concur. Bisig, J., concurs in result only. Nickell, J., concurs in part and dissents in part by separate opinion in which Keller, J., joins. Goodwine, J., not sitting.

The Court interpreted Kentucky Revised Statutes (KRS) 304.39-241, which empowers covered persons to “direct the payment of [personal injury protection (PIP)] benefits among the different elements of loss” as covering the categories of loss set out in KRS 304.39-020(5)(a)-(e), and the specific items of loss within those categories as both constituting “elements of loss.”

Accordingly, insureds who pursuant to KRS 304.39-241 exercise their rights to direct their insurance company to withhold tendering payment to their initial healthcare providers, can then direct their insurance company to follow their directions in distributing their PIP benefits to individual healthcare providers in the order they prefer. This empowers them to negotiate pursuant to KRS 304.39-245. Because the Court ruled that Erie should have followed the insureds’ directives regarding the order in which the providers should be paid,

and these payments were overdue pursuant to KRS 304.39-210(1), it affirmed the grant of summary judgment on this issue.

The Court also affirmed the award of statutory interest pursuant to KRS 304.39-210(2) for the delayed payment of benefits. However, the Court reversed the award of excess interest pursuant to KRS 304.39-210(2) and the award of attorney fees pursuant to KRS 304.39-220(2), concluding that the legal issue as to how to interpret “elements of loss” was not previously resolved and these awards were not justified because Erie acted appropriately in filing a declaration of rights action and requesting interpleader on this novel issue.

Justice Nickell concurred as to the portion of the opinion reversing the award of excess interest and attorney fees; he dissented from the majority interpretation given to the “different elements of loss.”

PERSONAL JURISDICTION:

ALYSSA BAUM V. JUSTIN ALDAVA

2024-SC-0182-DGE

April 24, 2025

Opinion of the Court by Justice Thompson. All sitting. Lambert, C.J.; Bisig, Conley, Goodwine, and Keller, JJ., concur. Nickell, J., concurs in result only by separate opinion.

Alyssa Baum fled to her family in Kentucky to escape abuse at the hands of Justin Aldava. Baum brought with her the couple’s child and filed an application for an Emergency Protective Order (EPO) to protect her and the child, which was granted by the Jefferson Family Court. Aldava was not a resident of Kentucky, had not committed any acts of domestic violence in Kentucky, and Kentucky did not possess personal jurisdiction over him. Following a hearing in which Aldava appeared and was represented, the family court entered a Domestic Violence Order (DVO) in favor of Baum and the couple’s child which also granted temporary custody of the child to Baum and prohibited Aldava from owning or possessing firearms.

In a prior opinion, this Court determined that the physical location of the couple’s child, in Kentucky, gave courts of our Commonwealth jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Kentucky Revised Statutes (KRS) 403.800 to 403.880), to resolve custody issues presented by a separate custody action also filed by Baum in Kentucky. *Aldava v. Johnson*, 686 S.W.3d 205 (Ky. 2024).

Following the family court’s entry of the DVO in favor of Baum, the Court of Appeals reversed determining that the family court did not have personal jurisdiction over Aldava, he had not waived his defense of lack of personal

jurisdiction, and therefore the family court erred by entering a DVO that did more than prohibit Aldava from breaking the law by approaching Baum and, thus, the family court's temporary custody determination and its firearms restrictions violated Aldava's due process rights.

The Supreme Court affirmed the Court of Appeals determination that the family court could enter a DVO prohibiting Aldava from contacting Baum but reversed the Court of Appeals' decision to the extent the Supreme Court determined that Aldava had waived the defense of a lack of personal jurisdiction and was therefore subject to the full extent of DVO protections available in the Commonwealth under KRS Chapter 403.

Furthermore, DVOs which grant temporary custody of children may be entered against non-resident respondents in accord with KRS 403.828(1) and may be entered in favor of minors themselves against non-resident parents pursuant to KRS 403.725(1)(b) and 403.727. Regarding firearms possession, the Court also determined that Kentucky courts may prohibit a non-resident, who was not otherwise subject to the jurisdiction of our courts, from obtaining or possessing firearms within the borders of our Commonwealth but that such orders cannot disturb the rights of those non-residents while they remain outside the confines of our state. Finally, the Court determined that the entry of DVOs in the Law Information Network of Kentucky (LINK) pursuant to KRS 403.751(2) does not violate non-residents' due process rights.

Justice Nickell concurred in result only; he would have ended the Court's analysis once it was determined that Aldava waived the defense of lack of personal jurisdiction.

WRIT OF MANDAMUS:

BRADLEY WILLIAMS V. HONORABLE LARRY E. THOMPSON, ET AL.

2024-SC-0498-OA

April 24, 2025

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

In a unanimous opinion written by Justice Conley, the Supreme Court denied Williams' petition for writ of mandamus because it determined Williams had an available albeit extraordinary remedy in the Court of Appeals to file a motion for reinstatement of his dismissed RCr 11.42 action. After the trial court denied his RCr 11.42 motion, Williams timely filed a notice of appeal pursuant to the Prison Mailbox Rule, RCr 12.04(5), according to the prison mail logs. A delay, however, apparently caused by prison officials and their handling of his mail caused the notice not to be received by the clerk for some time. A further delay occurred before it was filed by the clerk. Thus, the notice of appeal appeared to be untimely to the Court of Appeals, which then issued a show

cause order to Williams to explain why his appeal should not be dismissed as untimely. Once again, prison mail logs support Williams' contention that he timely filed a response to this order and, once more, a delay apparently attributable to prison officials caused this response to be untimely received by the Court of Appeals.

The Court of Appeals dismissed Williams' appeal and all other attempts by Williams either through filing a motion for reconsideration or CR 60.02 were denied. Williams then sought a writ of mandamus in the Supreme Court to compel the Court of Appeals to file his last CR 60.02 motion. The Supreme Court denied the writ of mandamus because CR 60.02 is not an available remedy in the Court of Appeals. Moreover, relying on precedent regarding the reinstatement of appeals when dismissed through the misconduct of appellate counsel, the Court held, "if an appeal can be restored where ineffective assistance of counsel has lost it, then it seems manifest an appeal may be restored when lost through the conduct of prison officials who are not even the legal representative of the party before the Court."

The Court then noted that Williams has a right of open access to the Courts under both Kentucky's and the federal constitutions, and a right to send and receive mail under both constitutions as well. Thus, the Court held, "[i]t is unpalatable in the extreme to countenance one constitutional right to be lost through the seemingly effective denial by prison officials of one or more other constitutional rights." Therefore, the Court reasoned this scenario justified an extraordinary remedy allowing Williams to file a motion for reinstatement in the Court of Appeals, further precluding a writ of mandamus. "Because Williams has a constitutional right to prosecute an appeal from the underlying RCr 11.42 action, a constitutional right to send and receive mail, and a right to send and receive legal mail subsidiary to the constitutional right to access the courts, we hold a motion for reinstatement of the appeal is an appropriate but extraordinary remedy to determine whether Williams did in fact comply with the Prison Mailbox Rule when he filed his Notice of Appeal."

ATTORNEY DISCIPLINE:

IN RE: DARRELL EDWARD SAMMONS

2024-SC-0564-KB

April 24, 2025

Opinion and Order. Lambert, C.J.; Bisig, Conley, Goodwine, Nickell, and Thompson, JJ. sitting. All concur. Keller, J., not sitting.

The Supreme Court indefinitely suspended Darrell Edward Sammons from the practice of law pursuant to SCR 3.167. Sammons violated SCR 3.164 by

failing to answer a KBA charge. In the underlying KBA matter, Sammons was accused of a lack of legal work on his client's behalf, a general failure to respond to communications, and failure to return any portion of his retainer or fees after his termination. For this alleged misconduct, Sammons was charged with violating SCR 3.130(1.1) (competence), SCR 3.130(1.3) (diligence), SCR 3.130(1.5)(a) (fees), SCR 3.130(1.16)(d) (termination), and SCR 3.130(8.1)(b) (disciplinary matters). Sammons failed to respond to the charge, leading to his indefinite suspension.

IN RE: JAY MICHAEL DADE

2024-SC-0574-KB

April 24, 2025

Opinion and Order. All sitting. All concur.

The Supreme Court indefinitely suspended Jay Michael Dade from the practice of law pursuant to SCR 3.167. Dade violated SCR 3.164 by failing to answer a KBA charge. In the underlying KBA matter, Dade failed to produce discovery in conformity with a trial court's order. As a result of the failure to produce the discovery (even after being given an additional thirty days), Dade's client had to pay the opposing party's attorneys' fees. Dade did not communicate any of this to his client. Dade was charged with violating SCR 3.130(1.3) for failing to diligently represent his client in civil litigation, SCR 3.130(1.4)(a) and (b) for failing to adequately communicate with his client and failing to discuss matters that affected the representation, SCR (3.3)(a)(1) for making false statements to the circuit court in the ongoing civil litigation, SCR (3.4)(c) for disobeying the trial court's pretrial orders regarding discovery and other matters, SCR (8.4)(c) for misrepresenting the extent of his activity in the ongoing litigation, and SCR 3.130(8.1)(b) for failing to respond to a lawful request for information in a disciplinary action. He failed to respond to the charge, leading to his indefinite suspension.

IN RE: MICHAEL JOSEPH BEATTIE

2025-SC-0057-KB

April 24, 2025

Opinion and Order. All sitting. Bisig, Conley, Goodwine, Keller, and Nickell, JJ., concur. Lambert, C.J., dissents by separate opinion in which Thompson, J., joins.

Michael Joseph Beattie moved the Supreme Court to enter a negotiated sanction against him pursuant to SCR 3.480(2) to resolve a pending disciplinary proceeding. The KBA had no objection. The Court concluded the proposed sanction was inadequate and rejected it.

Beattie was representing a client in a criminal matter involving the client physically harming the client's girlfriend. Beattie asked his client if the client had a girlfriend and if that girlfriend was pregnant. The client responded that he did have a girlfriend, but she was not pregnant. Beattie told the client if his girlfriend was pregnant, it would help with his bond. The client then said, "maybe she is pregnant." Beattie falsely represented to the trial court that Beattie's girlfriend was pregnant and needed his help at home and with her medical appointments.

The KBA Inquiry Commission charged Beattie with violating SCR 3.130(3.3)(a)(1), which provides that a lawyer shall not knowingly "make a false statement of fact or law to a tribunal" and SCR 3.130(8.4)(c), which provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

Beattie admitted he violated both rules as charged and proposed the Court publicly reprimand him for his misconduct. The majority, however, found the proposed sanction inadequate and remanded the case for further disciplinary proceedings pursuant to SCR 3.480(2). The majority distinguished the cases the parties' cited in support of the negotiated sanction, stating "[h]ere, Beattie's blatant lie to the trial court was used to secure the release of an allegedly dangerous individual, which posed a serious risk to the public." The majority also noted the cited cases involved misrepresentation by omission, which it contrasted with Beattie's conduct of devising a lie to present to the court.

IN RE: STEVEN O. THORNTON

2025-SC-0069-KB

April 24, 2025

Opinion and Order. Lambert, C.J.; Bisig, Conley, Goodwine, Keller, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

Clients hired Steven O. Thornton and paid him \$5,000 that he was to charge against them at an hourly rate. Thornton contacted opposing counsel in the case but failed to either enter an appearance in the case or file responsive pleadings. Thornton's inaction led to a default judgment against his clients. Thornton's clients requested a refund of fees from Thornton, which he did not provide until the clients filed a Bar complaint against him. A KBA trial commissioner found Thornton violated SCR 3.130(1.3) (diligence); 3.130(1.4)(a)(2) and (4) (consult with client on means to achieve client's objectives and promptly comply with requests for information); 3.130(1.16)(d) (take reasonable steps to protect client's interests upon termination of representation); and 3.130(8.1)(b) (failure to disclose necessary fact or respond to request for information in connection with disciplinary matter). The trial

commissioner recommended Thornton be suspended from the practice of law for one year. Neither Thornton nor the KBA filed a notice of appeal to the Supreme Court. The Court found the trial commissioner's recommendation was supported by the record and applicable law and adopted it.

IN RE: DAVID CURLIN

2025-SC-0082-KB

April 24, 2025

Opinion and Order. All sitting. Lambert, C.J.; Conley, Bisig, Goodwine, Nickell, and Thompson, JJ., concur. Keller, J., concurs in result only.

Henderson Family Court Judge David Curlin filed a motion for consensual discipline, seeking to resolve four open KBA files addressing his misconduct. The sanction the KBA and Judge Curlin negotiated called for a one-year suspension from the practice of law with ninety days to serve, retroactive to September 29, 2023 (when Curlin had been indefinitely suspended from the practice of law for failing to respond to multiple KBA complaints and charges along with orders of the Court). The Court approved and imposed the negotiated sanction.

In all the cases underlying the sanction, Judge Curlin was acting as a private attorney. In representing four clients, Judge Curlin committed various acts of misconduct. The Court found Judge Curlin guilty of four violations of SCR 3.130(8.1)(b) (failing to respond in a disciplinary matter), three violations of SCR 3.130(1.4)(a)(3) (keeping the client reasonably informed), three violations of SCR 3.130(1.4)(a)(4) (prompt compliance with reasonable requests for information), and one violation each of SCR 3.130(1.3) (diligence) and 3.130(1.16)(d) (protection of client's interests following termination).

IN RE: TIMOTHY LEE NOLAN

2025-SC-0103-KB

April 24, 2025

Opinion and Order. All sitting. All concur.

Timothy Lee Nolan filed a motion with the Supreme Court to resign under terms of permanent disbarment pursuant to SCR 3.480(3). The Court granted Nolan's motion and permanently disbarred him from the practice of law.

In 2019, Nolan pleaded guilty to multiple felony counts, most of which were of a sexual nature and some of which involved minors. After his indictment in 2017, the KBA had opened disciplinary proceedings against Nolan. He was

temporarily suspended from the practice of law in 2018 pursuant to SCR 3.166(1).

The Court agreed with Nolan that the conduct to which he pleaded guilty was sufficient to warrant permanent disbarment.

IN RE: DALE ANTHONY BRINKER

2025-SC-0105-KB

April 24, 2025

Opinion and Order. All sitting. All concur.

Dale Anthony Brinker has been temporarily suspended from the practice of law since 2013. The KBA's Board of Governors recommended he be permanently disbarred him from the practice of law. Neither Brinker nor the Office of Bar Counsel filed a notice of review. The Court adopted the Board's recommendation and permanently disbarred Brinker from the practice of law.

In 2022, Brinker pleaded guilty to three counts of felony theft by unlawful taking. The criminal charges arose when Brinker took money or property from two different estates for which he was serving as executor and trustee. In a separate matter, Brinker pleaded guilty to two more counts of felony theft by unlawful taking and one misdemeanor count. Again, Brinker had taken money from an estate.

When the Inquiry Commission issued a complaint to Brinker requesting additional information regarding his actions and the criminal charges, Brinker did not respond. The Inquiry Commission issued a two-count charge against Brinker asserting he violated SCR 3.130(8.4)(b) (committing a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness) and SCR 3.130(8.1)(b) (failure to respond in a disciplinary matter). Brinker did not respond to the charge.

The Court permanently disbarred Brinker from the practice of law.