Supreme Court of Kentucky

ORDER

IN RE: COURT RULES FOR MISDEMEANOR PRETRIAL DIVERSION FOR THE RUSSELL COUNTY JUDICIAL DISTRICT

Under KRS 533.262 and SCR 1.040(3)(a), and upon recommendation of the Chief District Judge of Russell County District Court, the Court Rules for the Russell County Judicial District Misdemeanor Pretrial Diversion, attached hereto, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this 15th day of May, 2009.

CHIEF JUSTICE

Court Rules for Russell County Misdemeanor Pretrial Diversion

I. ELIGIBILITY REQUIREMENTS

a. All persons charged in District Court with the commission of a misdemeanor shall be eligible for participation in the Administrative Office of the Courts Pretrial Services Diversion Program (Program) as an alternative to criminal prosecution, subject to the following conditions and exceptions:

i. The charge of violation of KRS Chapter 189A shall not be diverted.

ii. A person who has previously participated in a pretrial diversion program shall not be eligible for participation in the Program. However, where extraordinary circumstances exist, the trial judge may deem a defendant eligible for Program participation regardless of his/her ineligibility.

b. Nothing in this rule shall be deemed to limit the authority of the county attorney to withdraw criminal prosecution in any given case.

II. PARTICIPATION

a. Upon the consent of both the county attorney and the defendant, the trial judge shall approve participation in the Program for any individual who meets the eligibility requirements established in Section I above unless the trial judge, in his or discretion believes that:

i. There is a substantial risk that the defendant will abscond from the jurisdiction of the court prior to fulfillment of the terms of the diversion contract;

ii. There is a substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the diversion contract;

iii. The defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail; or

iv. Participation in the Program would unduly depreciate the seriousness of the defendant's crime.

b. The county attorney's consent to a defendant's participation in the Program shall not be unreasonably withheld. If the county attorney refuses to consent to a defendant's participation in the Program, he or she shall state on the record the reasons therefore.

c. Upon approval for participation in the Program, the defendant shall sign a statement waiving his or her right to a speedy trial. Prior to signing such statement, the defendant shall be given the opportunity to consult with an attorney if he or she so desires.

d. Participation in the Program shall not constitute an admission or presumption of guilt of the crime(s) charged, shall not be proof of guilt in any subsequent legal action, nor shall a Program participant be required to give a confession or admission of guilt.

e. All Program records and all statements made by a defendant to the pretrial officer regarding the contract shall be privileged; shall not be admissible or discoverable for any purpose; shall be exempt from subpoena; and, shall be deemed confidential. However, Program staff and the trial judge may access the information for purposes of Program review, monitoring and supervision. The information shall not be released to any other person or entity without prior written consent of the trial judge or the defendant. Nothing in this paragraph shall be deemed to prohibit release of information to the victim regarding a defendant's participation in the Program.

f. The fee for participation in the Program shall be in an amount set by the Director of the Administrative Office of the Courts. The court may assess the fee on a sliding scale based upon ability to pay or waive the fee entirely in the case of indigence.

III. THE DIVERSION CONTRACT

a. Upon approval of participation in the Program, the defendant shall meet with a pretrial officer to establish a formal contract which specifies the court ordered conditions, the referral services to be used, the length of the contract, and, if required, the need for the defendant to make restitution or perform community service. The contract shall commence upon approval by the trial judge.

b. Individual contract lengths shall be determined by the trial judge not to exceed 24 months.

c. The Program participant shall be required to comply with all provisions of the diversion contract. If the Program participant fails to comply with the conditions of the contract the pretrial officer shall refer the participant to the trial judge for a determination of either termination or modification. The trial judge shall enter an order reflecting said determination or modification. As with the original diversion contract, the participant shall agree to the contract modifications, if any, prior to reinstatement. Upon

the termination for noncompliance the county attorney may initiate prosecution of the defendant upon the original criminal charge(s).

d. A Program participant may terminate his or her contract, at any time, by submitting a written statement indicating same. Where termination is prior to the expiration of the contract period, the pretrial officer shall notify the trial judge and refer the case to the county attorney for the resumption of prosecution.

e. Upon successful completion of the diversion contract, the charge(s) subject to the contract shall be dismissed, and all official records shall bear notation "dismissed as diverted".

Have seen and approved:

Chief District Judge

AOC General Counsel