



1998

Recent Developments: Farris v. State: Failure to Appear for a Court Mandated Weekend Detention Does Not Constitute the Crime of Escape in Allegany County

David Schmitz

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Recommended Citation

Schmitz, David (1998) "Recent Developments: Farris v. State: Failure to Appear for a Court Mandated Weekend Detention Does Not Constitute the Crime of Escape in Allegany County," *University of Baltimore Law Forum*: Vol. 29 : No. 1 , Article 8.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol29/iss1/8>

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Farris v. State

The Court of Appeals of Maryland held that a failure to report for weekend detention at the Allegany County Detention Center did not rise to the crime of "escape" as defined in section 139 of article 27 of the Maryland Annotated Code. *Farris v. State*, 351 Md. 24, 716 A.2d 237 (1998). In so doing, the court concluded that because the defendant's freedom was not subject to any restrictions, he was not custody at the time of his failure to appear. The court reasoned that it would not be within its purview to expand the statute when its meaning was clear and unambiguous.

Floyd Dale Farris ("Farris") was convicted on November 2, 1995, in the District Court of Maryland for Allegany County of possession of a controlled dangerous substance. As a result of the conviction, Farris was sentenced to ninety days incarceration, with all the time suspended, and two years of supervised probation. In a subsequent court appearance, Farris was found guilty of violating his probation agreement. The district court again sentenced Farris to ninety days incarceration, with all but thirty days suspended, and placed him on three years supervised probation. As a condition of his sentence, Farris agreed to participate in the Allegany County Sheriff's Department weekend service of sentence program. Farris agreed

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that his thirty-day sentence would be served over fifteen consecutive weekends commencing at 11 a.m. on Friday morning and ending at 11 a.m. on Sunday morning. During the week, Farris was not subject to the restrictions of the weekend service program and was accordingly not credited with any time served. The district court instructed Farris that failure to comply with the conditions of his weekend detention would result in his incarceration for the entire ninety-day sentence.

Farris began serving his weekend detention on May 3, 1996. On June 21, 1996, Farris failed to appear for his weekend detention and, as a matter of course, was charged with escape. Following a trial in the Circuit Court of Maryland for Allegany County, Farris was convicted of escaping lawful detention and confinement, and was sentenced to

a consecutive six-month sentence of incarceration.

Farris appealed to the Court of Special Appeals of Maryland where his conviction for escape was affirmed. The Court of Appeals of Maryland granted certiorari in order to resolve the issue of whether the failure of a person to report for weekend detention in Allegany County constituted an "escape" as defined by Maryland law.

In its review of the case, the court of appeals focused on whether Farris was within the constructive custody of the detention center during the week. *Farris*, 351 Md. at 26, 716 A.2d at 239. The court did not address whether he escaped because the resolution of the custody question dictated the answer to the escape question. *Id.* at 28, 716 A.2d at 240.

In the first part of its opinion, the court reviewed and reiterated the method by which it interpreted statutes. *Id.* at 28-29, 716 A.2d at 240. The court reaffirmed the line of cases outlining rules of statutory construction: if the statute is clear on its face, then no other interpretation will be used to supplant the legislative intent behind the statute, *Id.* at 28, 716 A.2d at 240 (citing *Briggs v. State*, 348 Md. 470, 477, 704 A.2d 904, 908 (1998)); if the statute is ambiguous, the court would then turn to "the usual meaning of the words" within its context and the legislative intent behind the

statute, *Id.* at 28-29, 716 A.2d at 240 (citing *Briggs*, 348 Md. at 477, 704 A.2d at 908); and if the statute is a criminal statute, then it is to “be construed in favor of the defendant to prevent courts from extending punishment to cases not plainly within the language of the statute.” *Id.* at 29, 716 A.2d 240 (citing *Tapscott v. State*, 343 Md. 650, 654, 684 A.2d 439, 441 (1996)).

With those guiding principles in mind, the court examined the applicable portion of section 139(a) of article 27 defining the elements of escape. *Id.* The first element of “escape” required the prisoner to have been in lawful custody. *Id.* The statute provides, in pertinent part, that a prisoner must have been detained in “the state penitentiary or a jail, house of correction, reformatory, station house, or other place of confinement in this state or . . . to the Alcohol and Drug Abuse Administration for examination or impatient treatment.” *Id.* The court noted that the custody could be either “actual” (escaping from a prison cell) or “constructive” (not returning from a weekend furlough). *Id.* (citing 4 Charles E. Torcia, *Wharton’s Criminal Law* § 633 (1996)). However, the court did not have to differentiate between the two, because both forms satisfied the definition of custody under section 139(a). *Id.* at 30, 716 A.2d at 241. To have lawful custody, either “actual” or “constructive,” the court determined that the person must have some limitation imposed on

his personal freedom by legal authority. *Id.* at 33, 716 A.2d at 242. The court stated that “[w]hen a person is free in every sense of the term, he or she is no longer in custody, and hence, cannot be guilty of the crime of escape.” *Id.*

The second element of “escape” is that the prisoner must actually depart from lawful detention or custody. *Id.* at 30, 716 A.2d 240-41 (citing *Fabian v. State*, 3 Md. App. 270, 281, 239 A.2d. 100, 108 (1968)). Because the statute did not define the term “escape,” the court relied upon the plain language definition as well as the line of Maryland cases defining “escape.” *Id.* at 29, 716 A.2d 240. The court, however, did not have to provide extensive judicial gloss on the definition of “escape” because the court concluded that Farris was not in custody, “actual” or “constructive,” at the time of his failure to appear. *Id.* at 35, 716 A.2d at 243.

The court of appeals rejected the State’s contention that it had constructive custody over Farris during the week. *Id.* at 34, 716 A.2d at 242. The court aptly noted that Farris was free during the week and that he was “neither lawfully committed to the detention center nor subject to any [of its] restrictions.” *Id.* In a footnote, the court stated that if it had accepted the State’s argument that they had constructive custody over Farris during the week, Farris’ thirty-one day sentence would have actually been one hundred and three days. *Id.* at 35, 716 A.2d at 243 & n.5.

The court went on to state that Allegany County was one of the only counties that had not criminalized failure to appear for weekend detention, and that the Maryland legislature knew of this anomaly. *Id.* at 35, 716 A.2d at 243. The legislature had criminalized failure to appear in other counties and “certainly knew how to do it” for Allegany County. *Id.* (citing statutes for ten Maryland Counties that criminalized either the failure to comply with authorization of leave, the failure to return to custody, or the violation of a term of leave). The court concluded that Farris was not in custody at the time of his violation and that he did not depart from the place of his detention. *Id.* His failure to appear for weekend detention at the Allegany County Detention Center did not constitute the crime of escape in Allegany County as provided for in section 139 of article 27 of the Maryland Annotated Code. *Id.*

Finding that the failure to appear for weekend detention did not constitute the crime of “escape” in Allegany County, the court of appeals wanted to make the legislature aware that it needed to re-examine the criminality of this failure to appear as applied to Maryland counties. It is the job of the legislature, not the courts, to bring into conformity the laws of the counties. A better-unified statute criminalizing the failure to appear for weekend detention would end the disparity between the counties and be a source of

consistency upon which Maryland practitioners can depend.

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