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APPENDIX 2

Court sides with sheriff

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City and county officials will discuss a plan today to share county jail space.

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YOUNGSTOWN -- The 7th District Court of Appeals has ruled that municipal courts and common pleas courts aren't equals when it comes to managing the county jail and its inmates.

In a 2-1 opinion issued Monday, appellate judges granted a writ of prohibition as sought by Mahoning County Sheriff Randall A. Wellington against Judge Elizabeth A. Kobly of Youngstown Municipal Court.

That means Judge Kobly cannot order Wellington to attend a show-cause hearing that could have led to a contempt-of-court charge.

Ronald Tomlin of Youngstown, whom Judge Kobly sentenced last November to seven days in county jail for misdemeanor domestic violence, received emergency release despite the judge's order to the contrary. Wellington said the part of the judge's journal entry with her handwritten "do not release" instructions was not received by jail personnel.

The case also concerned the county's emergency release mechanism, which common pleas court judges devised to limit jail population. A federal judge declared the jail to be unconstitutional in March 2005 because of overcrowding and staffing shortages.

How this is done

Inmates who qualify, depending on the seriousness of their crimes, either serve time when jail space is available or have their sentences converted or suspended by judges.

Judge Kobly had argued that the release mechanism was modifying her sentence orders.

Appellate judges Gene Donofrio and Joseph Vukovich ruled otherwise. "The release mechanism ordered by the common pleas court provides a logical mechanism to furlough inmates until such time as there is room for them to serve the remainder of their sentences and to bring the jail into constitutional compliance," Judge Donofrio wrote in the majority opinion.

Furthermore, the General Assembly long ago gave common pleas courts exclusive authority over jail operations. There is "no such statutory or case law that gives a municipal court such specific identical authority," Judge Donofrio wrote.

In her dissenting opinion, Judge Mary DeGenaro said the appellate court shouldn't stop Judge Kobly "from exercising her lawful contempt powers, even if we believe that it is unlikely that [she] will be able to find [Wellington] in contempt."

County Prosecutor Paul J. Gains, who filed court motions on Wellington's behalf, said he wasn't surprised that the appeals court ruled in the county's favor.

"We are weighing our options at the moment," said Atty. Anthony J. Farris, the city's chief assistant prosecutor. The city could file an appeal with Ohio Supreme Court or seek a writ of prohibition regarding the emergency release mechanism, he said.

Neither path will need to be taken if the city and county can come to terms on jail bed allocations. That's supposed to be the topic of a meeting today between county officials and Mayor Jay Williams.

The county Criminal Justice Working Group has proposed reserving 96 beds for city prisoners at a rate of \$25 per day, plus meals and medical expenses, and giving municipal judges the right to create their own release mechanism over the city's portion of the jail. The city says it will pay for defendants who are charged with breaking municipal ordinances but not state statutes.

"We would really like to work this out with the city," Gains said.

"We've never been adverse to an agreement," Farris said. "It's the terms that are at issue." Ssh

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