

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000266-MR

JOEL MARDIS

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 99-CR-00034

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BAKER, GUIDUGLI, AND SCHRODER, JUDGES.

BAKER, JUDGE: Joel Mardis brings this *pro se* appeal from a January 2, 2002, order of the Calloway Circuit Court. We affirm.

On February 19, 1999, Joel Mardis waived extradition from the Marion County, Indiana, Detention Center to Calloway County, Kentucky, to face a charge of second degree rape. On April 26, 1999, Mardis pled guilty to an amended charge of third degree rape, pursuant to a written plea agreement with the Commonwealth. On June 30, 1999, the circuit court sentenced Mardis to five years imprisonment. The court concomitantly

probated Mardis' sentence, requiring that Mardis, among other conditions, enter and complete a sex offender treatment program.

On December 17, 1999, Mardis' probation officer recommended that his probation be revoked because he had failed to complete the sex offender program. The circuit court, on February 28, 2000, revoked Mardis' probation, crediting him with 68 days of time served. Mardis subsequently filed a motion styled, "Motion Pursuant to KRS 532.120(3) Requesting Court to Enter an Order Granting Movant Additional Jail Credit." The court denied his motion. This appeal follows.

Mardis asserts that the circuit court erred by denying him six months additional jail credit. Mardis claims that he was "arrested on August 25, 1998 in Indianapolis, Indiana by the Indianapolis Police Department on a warrant issued by Murray, Kentucky for the charges of Second Degree Rape" (Mardis Brief at 1). Mardis claims that under KRS 532.120(3) he is entitled to jail credit from the time of his arrest in Indiana until his waiver of extradition to Kentucky.

KRS 532.120(3) reads in pertinent part: "Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the court imposing sentence toward service of the maximum term of imprisonment." This statute clearly states that time spent in custody prior to the commencement of a sentence of imprisonment will count toward service of the sentence only when the prior

custody is a result of the charge for which the individual is ultimately sentenced. Haney v. Wingo, Ky., 453 S.W.2d 556, 556 (1970).

We observe that the circuit court noted in its denial of Mardis' motion that the time Mardis served in Indianapolis was for charges brought against him by the state of Indiana. Mardis admits that when this detainer was lodged against him he was serving time for a contempt charge brought by the state of Indiana. He argues, however, that because this charge was dismissed he should be entitled to jail credit for the time served in Indiana between August 25, 1998, and his waiver of extradition to Kentucky on February 19, 1999.

Mardis presents no evidence that the Indiana charges were dismissed, as he asserts in his brief. It is the burden of the appellant to see that the documents necessary for this court to review an appeal are included in the record. Fanelli v. Commonwealth, Ky., 423 S.W.2d 255, 258 (1968). In the absence of evidence to the contrary, we must presume that the record supports the decision of the circuit court. Harper v. Commonwealth, Ky., 694 S.W.2d 665, 668 (1985); see also Commonwealth v. Thompson, Ky., 697 S.W.2d 143, 145 (1985). In short, the circuit court did not commit reversible error by denying Mardis additional jail time credit.

For the foregoing reasons, the order of the circuit court is affirmed.

ALL CONCUR.

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