

RENDERED: MARCH 21, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000635-MR

KEITH ALLEN ROBARDS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NOS. 98-CR-001830; 98-CR-001849;
AND 00-CR-000748

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: HUDDLESTON, PAISLEY AND TACKETT, JUDGES.

PAISLEY, JUDGE. Appellant, Keith Allen Robards, appeals from an order entered by the Jefferson Circuit Court which denied his motion for 307 days of custody credit. As, our review of the record reveals that appellant is not entitled to any additional credit, we affirm the decision of the trial court.

In February 1999, appellant pled guilty to various felony charges under indictment numbers 98-CR-1830 and

98-CR-1849. The Jefferson Circuit Court sentenced him to three years in prison, but probated the sentence for a period of five years. Appellant subsequently violated the terms of his probation when he absconded and failed to report to his probation officer as required. He was arrested on December 30, 1999, pursuant to both a bench warrant for the probation violation and an arrest warrant relating to additional criminal charges. His probation was formally revoked on February 4, 2000, at which time he began service of the three-year sentence originally imposed in 1999.

On November 3, 2000, appellant pled guilty to the additional criminal charges under indictment number 00-CR-748. He was sentenced to five years in prison, to be served consecutively with any other sentence. Thereafter, appellant filed several motions with the trial court requesting custody credit for time spent in jail prior to sentencing. Each of appellant's motions was denied, and this appeal followed.

Appellant argues that he is entitled to 307 days of custody credit under indictment number 00-CR-748 for 307 days spent in jail from December 30, 1999, to November 3, 2000. However, the records shows that from December 30, 1999, until February 4, 2000, appellant was incarcerated on two separate matters. The first pertained to revocation of his probation in the 1998 cases, and the other involved awaiting disposition of

indictment number 00-CR-748. For this period of incarceration, appellant received 36 days of custody credit toward his 1999 sentences. Appellant was not entitled to also receive credit under indictment number 00-CR-748 for this same period of time as this would result in appellant's receipt of double credit.

On February 5, 2000, appellant began service of his 1999 sentences. At that time he began receiving institutional credit rather than presentence custody credit for time spent in jail. As explained in the record by the Department of Corrections, custody credit is awarded for presentence incarceration, whereas institutional credit is calculated from the date on which a defendant is remanded to the custody of an institution for service of a sentence. As the remaining time served to November 3, 2000, was applied to appellant's institutional service of time on the sentences for the 1998 cases, he is not entitled to also receive credit under indictment number 00-CR-748 for this same period of time.

Appellant further claims that the proper amount of custody credit is not reflected on his resident record card. However, our review of the record shows that the resident record card is generated by the Department of Corrections, and it only reflects time spent in jail prior to the revocation of appellant's probation. Once appellant began service of his 1999 sentences, the institution where appellant was confined began

calculating his incarceration time separately from the Department of Correction's record for presentence confinement. Hence, the proper amount of time was applied to his 1999 sentences.

Clearly, appellant is not entitled to any additional custody credit. All of his time spent in presentence confinement was credited to his 1999 sentences. The time he spent incarcerated following revocation of his probation but before disposition of indictment number 00-CR-748 was also applied toward the 1999 sentences because he was actually serving them at that time. The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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