

RENDERED: November 21, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001424-MR

ERNEST JUNIOR SCHNITZLER

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
ACTION NOS. 98-CR-00194 & 99-CR-00121

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING AND REMANDING
** **

BEFORE: BAKER, KNOPF, AND TACKETT, JUDGES.

TACKETT, JUDGE: This is an appeal from an order of the Boone Circuit Court denying a motion to correct a judgment. It appears that Ernest Schnitzler was placed on probation in both Kenton County and Boone County for offenses that were committed close in time to one another. As part of his plea bargain in Boone County, Schnitzler was to serve any time concurrently with the charges in Kenton County. Having received probation in both counties, Schnitzler subsequently violated his probation. It appears that the order revoking his probation in Boone County

was not clear, and the Department of Corrections treated Schnitzler as if he had been ordered to serve his time consecutively. Schnitzler filed a motion to correct the judgment, which was denied by the Boone Circuit Court. This appeal followed.

The Commonwealth is in agreement that Schnitzler is entitled to relief. Although the Commonwealth was unable to find the video record of the probation revocation hearing, it obtained an affidavit from the Assistant Commonwealth's Attorney that handled the case, verifying that Schnitzler was indeed to serve his Boone County sentence concurrently with the sentence he received in Kenton County. The parties agree that the judgment should be amended to reflect the terms of Schnitzler's plea bargain.

Accordingly, this court vacates the judgment of the Boone Circuit Court, and orders the judgment to be amended to reflect that Schnitzler's Boone County sentence is to be served concurrently with any sentence received in Kenton County to reflect the terms of his plea bargain agreement.

ALL CONCUR.

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