

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001452-MR

KEITH SEADLER

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NOS. 99-CR-000673, 99-CR-001529, & 99-CR-002005

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BAKER, GUIDUGLI AND PAISLEY, JUDGES.

GUIDUGLI, JUDGE. Keith Seadler ("Seadler") appeals from a denial of his motion filed pursuant to KRS 532.120(3) for credit of addition pre-sentence time spent in confinement prior to sentencing. We affirm.

Seadler entered a guilty plea to three separate indictments (99-CR-0673, 99-CR-1529 and 99-CR-2005) and was sentenced to six years in the state penitentiary on August 30, 1999. He was sentenced to one year on each of six counts of

sexual abuse, first degree, with each one year sentence to run consecutively for a total of six years. At the time of sentencing, the trial court ordered the following as it relates to credit for time spent in custody prior to sentencing on all three indictments, "The defendant shall be entitled to credit for time spent in custody prior to sentencing as determined by the Department of Probation and Parole."

Apparently the Department of Probation and Parole allowed Seadler credit of 14 days. He claims he is entitled to an additional 42 days. As such, he filed a "Motion Pursuant to KRS 532.120(3) To Have Credit For All Pre-Sentence Confinement Time Reflected In Final Judgment" with the Jefferson Circuit Court on May 14, 2002. In his motion, he argued that pursuant to KRS 532.120(3) he shall be credited for time spent in custody prior to commencement of a sentence as a result of the charge that culminated in the sentence. The trial court denied the motion on May 16, 2002, finding that Seadler was not in custody on the above indictments until August 2, 1999, some 24 days prior to his sentencing. However, upon reviewing Seadler's motion to reconsider the trial court noted that Seadler had been in custody on Indictment 99-CR-2005 from July 4 (1999), until sentencing (August 30, 1999)(a total of 56 days). Despite this notation on the motion to reconsider, Seadler claims he still

has not been credited any additional time and thus, filed this appeal.

On appeal Seadler, again, argues that he spent 56 days in jail prior to sentencing but was only credited for 14 days by Probation and Parole. The Commonwealth's response is that Seadler's appeal is procedurally barred pursuant to Duncan v. Commonwealth, Ky.App., 614 S.W.2d 701 (1981). We agree with the Commonwealth's argument. In Duncan, this Court held that a defendant must file such a motion within one (1) year after final judgment was entered. Specifically, the Duncan Court stated:

This is an appeal from an order of the trial court overruling the appellant's motion, under KRS 532.120(3), (4), to require it to credit the appellant with all time spent in custody prior to the entry of a final judgment. Procedurally, we believe that this appeal falls within the provisions of CR 60.02 rather than RCr 11.42. As such, we affirm the trial court in that the appellant failed to file his motion with that court within one (1) year after the final judgment was entered.

. . . .

Clearly, in requesting this Court to order the trial court to amend its original judgment, the appellant is making a motion to be relieved from the trial court's final judgment on the basis of mistake. He is not challenging the sentence per se, but the extent of time he should be credited in serving such a sentence. Consequently, he is bound by the provisions of CR 60.02. One such provision is that a party seeking to be

relieved from a judgment of a trial court on the basis of a mistake must make a motion to that effect within one (1) year after the date of the final judgment. . . .

Here, the appellant waited a year and a half from the time of the entry of the trial court's judgment to request such relief. Given this fact, we believe that he is estopped from raising the issue before this Court. Furthermore, we do not believe that his request sets forth a reason of extraordinary nature justifying the relief requested. See Board of Trustees of P. & F. Retire. F. v. Nuckolls, Ky., 507 S.W.2d 183 (1974).

Id. at 701, 702.

We believe the case before us is factually similar to Duncan and the relief sought by Seadler to be the same as that addressed by the Duncan Court. As Seadler failed to bring his motion within one year following entry of final judgment, he is time barred from pursuing this action.

For the foregoing reasons, the Jefferson Circuit Court's order denying Seadler's request for relief is affirmed.

ALL CONCUR.

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