

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001964-MR

MARK STACY

APPELLANT

v. APPEAL FROM BREATHITT CIRCUIT COURT
HONORABLE LARRY MILLER, JUDGE
ACTION NO. 00-CR-00058

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, SCHRODER, AND TAYLOR, JUDGES.

SCHRODER, JUDGE. This is an appeal from an order denying appellant's motion for additional jail time credit for time spent in custody awaiting trial. Because the record indicates that appellant was serving out a sentence on a prior felony for which his probation had been revoked during the period in question, appellant was not entitled to credit for this jail time. Hence, we affirm.

On October 30, 1999, appellant, Mark Stacy, was driving his car when he lost control rounding a curve and struck an embankment. As a result, one of his passengers was killed and another seriously injured. On November 6, 2000, Stacy was indicted for murder, assault in the first degree, tampering with physical evidence, and persistent felony offender in the first degree. On February 26, 2002, Stacy pled guilty to the amended charges of second-degree manslaughter and second-degree assault pursuant to a plea bargain whereby the Commonwealth agreed to dismiss the other charges and recommend a sentence of fifteen years' imprisonment. On March 22, 2002, the court sentenced Stacy to fifteen years' imprisonment and gave him 322 days of jail time credit for time served awaiting trial. Thereafter, on July 12, 2002, Stacy moved to amend his jail time credit.

It is undisputed that Stacy has been incarcerated from November 1, 1999 to present. Stacy maintained below, as he does on appeal, that he was entitled to credit for all the time served between November 1, 1999, and the day of his sentencing, March 22, 2002. It was the Commonwealth's position that from November 1, 1999 to June 1, 2001, Stacy was actually serving out a prior sentence pursuant to his probation being revoked as a result of the crime committed in the present case. The court agreed with the Commonwealth and denied the motion. This appeal followed.

The record reflects that on June 11, 1999, Stacy was convicted pursuant to Breathitt County Indictment No. 99-CR-00003 and received a three-year sentence, with sixty days to serve and the balance probated for five years. It was while out on probation on the 99-CR-00003 conviction that Stacy committed the offenses in the case at bar. Consequently, Stacy's probation on the 99-CR-00003 conviction was revoked on November 19, 1999.

KRS 532.120(3) provides 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. (emphasis added.)

The issue then in this case is whether the time Stacy spent in jail prior to sentencing on the present offense was the result of the indictment in the present case or was a serve-out of the prior conviction in 99-CR-00003. We must note that we do not have the benefit of having the full record for Indictment No. 99-CR-00003 before us. There are documents in the record before us indicating that Stacy came up for parole consideration on the previous conviction and was granted parole in May 2000, but said parole was thereafter voided in December 2000 because of his "misdemeanor record", the "seriousness of [the] current offense", and his "history of drug and/or alcohol abuse". In

fact, a docket sheet from the instant case indicates that at the hearing on the motion to amend jail time credit on August 23, 2002, a probation officer with the Department of Corrections (the "Department") advised the court that the Department's calculations of time served were correct because Stacy was never actually paroled on the 99-CR-00003 conviction. As there is nothing in the record refuting this fact, we must accept it as true. Likewise, we must accept the Department's computation of time served based on this fact. Accordingly, the lower court properly denied the motion to amend jail time credit.

For the reasons stated above, the order of the Breathitt Circuit Court is affirmed.

ALL CONCUR.

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