

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-002152-MR

CLINTON D. BRADEN

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE  
ACTION NO. 99-CR-000434

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

EMBERTON, CHIEF JUDGE. Pursuant to a plea bargain agreement, on March 20, 2000, Clinton D. Braden appeared before the Jefferson Circuit Court and entered a guilty plea to: (1) two counts of fraudulent use of a credit card; (2) theft or receipt of a stolen credit card; (3) criminal possession of a forged instrument in the second degree; (4) disorderly conduct; (5) resisting arrest; (6) alcohol intoxication; and, (7) persistent felony offender, second degree. In return for the plea, the

Commonwealth agreed to recommend a total sentence of ten years' imprisonment and not object to probation. At the time of his sentencing Braden was serving an eight-year prison term in Tennessee that commenced in 1999; and pursuant to the circuit court's judgment, Braden was then returned to Tennessee to serve his Tennessee sentence concurrent with his Kentucky sentence. In July 2002, Braden was paroled in Tennessee and returned to Kentucky to serve the remainder of his Kentucky sentence. The issue presented is whether Braden must be returned to Tennessee to serve the remainder of his paroled sentence or if Kentucky has the authority to detain him.

In Brock v. Sowders,<sup>1</sup> Brock, while imprisoned in Indiana, pled guilty to three counts of armed robbery in Kentucky's Carroll Circuit Court and pursuant to a plea agreement, was sentenced to three ten-year sentences, each to run concurrently with the other and with his Indiana sentence. After he was returned to Indiana, he was paroled and immediately taken into custody by Kentucky authorities. Under the facts, Indiana law, and Kentucky law, the Kentucky Supreme Court held that until the maximum term on the Indiana sentence was completed, the Kentucky Bureau of Corrections had no authority

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<sup>1</sup> Ky., 610 S.W.2d 591 (1980).

to detain Brock.<sup>2</sup> In Brock, pursuant to the plea bargain, the judgment explicitly provided that "Brock's Kentucky sentences would run concurrently with his Indiana sentence" and that he would be returned to Indiana to "serve said sentences." The plea bargain, the court held, must be honored by the Kentucky Department of Corrections.<sup>3</sup> Because the Indiana statute in effect at the time provided that while on parole the prisoner remains in the custody of the parole agent and warden of the prison from which he is paroled until the expiration of the maximum term specified in his sentence or discharged by law, the court held that Brock remained in Indiana's custody.

This case is distinguished from Brock because the Commonwealth, as a part of the plea bargain, did not agree to run the sentences concurrently with the Tennessee sentence, nor did it agree that both sentences would be served in Tennessee. It agreed only not to oppose probation. The circuit court denied probation but at the sentencing hearing granted Braden's request that the Kentucky and Tennessee sentences run concurrently. Although the judgment states that Braden would be returned to Tennessee to serve that sentence first, it was clearly expressed at the sentencing that upon termination of the

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<sup>2</sup> It was unclear from the record when Brock's incarceration in Indiana began so the court remanded the case for a determination of Brock's original date of confinement and term of his Indiana sentence.

<sup>3</sup> Id. at 592.

Tennessee sentence, or when paroled in that state, Braden would be returned to Kentucky to serve the remainder of his ten-year sentence. Unlike in Brock, the judgment does not provide that Braden serve his Kentucky sentence in Tennessee.

The judgment of the circuit court is affirmed.

ALL CONCUR.

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