

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-002189-MR

HERBERT HOWARD

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE LEONARD L. KOPOWSKI, JUDGE  
ACTION NO. 00-CR-00118

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, SCHRODER AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Herbert Howard brings this *pro se* appeal from a September 24, 2002 order of the Campbell Circuit Court. We affirm.

On March 24, 2000, appellant was arrested on the charge of second degree assault. He was subsequently indicted by the Campbell County Grand Jury upon the same charge on April 20, 2000 (Action No. 2000-CR-00118). Appellant entered into a plea agreement with the Commonwealth wherein his charge of

assault in the second degree was reduced to assault under extreme emotional disturbance. A sentence was recommended of five years imprisonment to be probated for five years on the condition that appellant serve six months in jail and receive treatment for drug and alcohol abuse. On July 17, 2000, appellant was sentenced accordingly.

Later, appellant was arrested by the Covington Police Department and charged with first degree assault, second degree DUI, possession of drug paraphernalia and possession of a controlled substance on June 8, 2001 (Action No. 2001-CR-00500).

On June 27, 2001, the Commonwealth Attorney filed a motion to revoke appellant's probation in Action No. 2000-CR-00118, as a result of the new charges in Action No. 2001-CR-00500.

On September 24, 2001, appellant entered a guilty plea in Action No. 2001-CR-00500, to the offenses of drug paraphernalia and DUI. He was sentenced to six months imprisonment. It appears that appellant received 108 days credit for time spent in custody prior to sentencing.

On November 7, 2001, the Kenton County Circuit Court entered an order revoking appellant's probation in Action No. 2000-CR-00118 and imposing the sentence of five years imprisonment. Appellant received 120 days jail time credit for time served prior to sentencing.

Appellant filed a *pro se* CR 60.02 motion, in Action No. 2000-CR-00118, requesting additional jail time credit. The circuit court ultimately denied appellant's motion, thus precipitating this appeal.

We observe that appellant has filed a *pro se* brief and his argument concerning additional jail time credit is somewhat confusing. We will, however, to the best of our ability attempt to answer same.

Appellant contends that the circuit court committed reversible error by failing to credit him with an additional 154 days. After reviewing the brief, it appears that appellant is arguing that he is entitled to credit in Action No. 2000-CR-00118, for time spent in custody under Action No. 01-CR-00500. Specifically, appellant claims entitlement to jail time credit from March 24, 2000 to July 17, 2000 and from June 8, 2001 to July 17, 2001.

It is well established that appellant is not automatically entitled to jail time credit for time spent in custody upon another charge. See Lemon v. Corrections Cabinet, Ky. App., 712 S.W.2d 370 (1986). KRS 532.120(3) only mandates that the accused receive jail time credit for time spent in custody as a result of the charge for which he is incarcerated. Hence, we view appellant's argument to be without merit.

For the foregoing reasons the order of the Campbell  
Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Herbert Howard III, Pro Se  
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BRIEF FOR APPELLEE:

Albert B. Chandler III  
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