

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-000839-MR

ERIC BERRY

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT
HONORABLE PHILIP PATTON, JUDGE
ACTION NO. 99-CR-00177

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE, KNOPF, AND TACKETT, JUDGES.

KNOPF, JUDGE: In April 1998, the Allen County grand jury indicted Eric Berry for trafficking in marijuana and related crimes.¹ In April and May 1999, while trial of the Allen County charges was pending, Berry burglarized residences in Barren County and stole and defaced property. He was indicted in Barren County in August 1999 on charges of burglary, theft, and criminal mischief. In July 1999, the Allen Circuit Court

¹ 98-CR-00027-001.

convicted Berry and sentenced him to ten years in prison. The Barren County charges were tried in March 2000. Berry was again convicted and by order entered April 25, 2000, the court sentenced him to twenty years' imprisonment to be served consecutively to the ten-year Allen County sentence. In December 2002, Berry, proceeding pro se, moved pursuant to CR 60.02 for relief from the Barren County judgment to the extent that it ordered the ten and the twenty-year sentences to be served consecutively. He argued that the thirty-year aggregate sentence exceeded the limit imposed by KRS 532.110(1). By order entered March 24, 2003, the trial court denied the motion, and Berry, still pro se, appealed. We affirm.

As the trial court noted, KRS 533.060(3) provides that

[w]hen a person commits an offense while awaiting trial for another offense, and is subsequently convicted or enters a plea of guilty to the offense committed while awaiting trial, the sentence imposed for the offense committed while awaiting trial shall not run concurrently with confinement for the offense for which the person is awaiting trial.

It is well established that this provision constitutes an exception to the limit KRS 532.110(1) imposes on aggregate sentences.² Because Berry committed his Barren County offenses while awaiting trial on the Allen County charges, KRS 533.060(3)

² Cosby v. Commonwealth, 147 S.W.3d 56 (Ky., 2004); see KRS 532.110(2) (2002).

mandates that the two sentences be served consecutively. The trial court correctly so ruled. Accordingly, we affirm the March 24, 2003, order of the Barren Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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