

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001238-MR

CHRISTOPHER L. FLORENCE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
ACTION NO. 01-CR-00504

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

BUCKINGHAM, JUDGE: Christopher L. Florence appeals from an order of the Fayette Circuit Court denying his motion for additional jail credit. Florence claims that the circuit court erred by denying him jail credit for time that he spent in a county jail in Ohio toward the service of his felony sentence in Kentucky. We find no error and thus affirm.

On July 18, 2001, Florence was sentenced by the Fayette Circuit Court to twenty years in prison following his

conviction for felony offenses. Pursuant to KRS¹ 532.120(3), he was given 144 days credit toward the service of his sentence based on time spent in custody in Kentucky prior to the commencement of the sentence. On May 5, 2003, Florence moved the circuit court pursuant to the aforementioned statute to credit him with an additional 341 days jail credit based on time spent in Ohio jails while under a detainer warrant on these charges.

In support of his motion for an additional 341 days jail credit, Florence proved that he had spent 260 days in the Butler County jail in Ohio as well as an additional 81 days in other Ohio jails after being transferred from the Butler County jail. The Commonwealth and the circuit court agreed with Florence that he was entitled to credit for the last 81 days spent in jail in Ohio prior to being transferred to Kentucky. However, the court denied Florence's motion that he be credited with an additional 260 days for the time he spent in the Butler County jail.

There is no question that a detainer from Fayette County was lodged against Florence in Butler County during the entire time he was jailed there. Citing KRS 532.120(3), Florence argues that the circuit court erroneously denied his motion to credit him with the 260 days in the Butler County jail

¹ Kentucky Revised Statutes.

as well as the 81 days spent in other Ohio jails prior to his transfer to Kentucky.

Florence's motion is without merit for two reasons. First, he is estopped from raising this issue by filing his motion nearly two years after the final judgment of conviction. This court was faced with the same situation in Duncan v. Commonwealth, Ky. App., 614 S.W.2d 701 (1980). In that case, this court noted that a motion for additional jail credit under KRS 532.120(3) falls within the requirements of CR² 60.02 and is bound by those provisions. Id. at 701-02. A motion for additional jail credit is essentially a motion to be relieved from a trial court's final judgment on the basis of mistake. Id. at 702. Therefore, such a motion must be made within one year after the date of the final judgment. Id.; CR 60.02(a). Since Florence's motion was filed nearly two years after the final judgment, it was untimely.

Second, Florence's motion was properly denied by the circuit court because it was without merit. Florence claims entitlement to credit for the 260 days that he spent in custody in the Butler County jail in Ohio because Fayette County had a detainer lodged against him for the charges which ultimately led to his conviction and sentence of twenty years in this state. However, the record indicates that he was lodged in Butler

² Kentucky Rules of Civil Procedure.

County during the time in question on Ohio charges for the entire 260 days. The mere fact that Fayette County had a detainer warrant lodged against him during this entire period of incarceration does not entitle him to credit for jail time on those charges. See Houston v. Commonwealth, Ky. App., 641 S.W.2d 42, 45 (1982).

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Palombi
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Janine Coy Bowden
Assistant Attorney General
Frankfort, Kentucky