

RENDERED: April 1, 2005; 10:00 a.m.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2004-CA-001354-MR

LARRY REDMAN

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE STEVEN R. JAEGER, JUDGE  
ACTION NO. 00-CR-00321

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER  
DISMISSING

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BEFORE: COMBS, CHIEF JUDGE; McANULTY, JUDGE; MILLER, SENIOR  
JUDGE.<sup>1</sup>

MILLER, SENIOR JUDGE: Larry Redman brings this pro se appeal  
from an order of the Kenton Circuit Court denying his motion for  
additional jail time credit above the level calculated by the

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<sup>1</sup> Senior Judge John D. Miller sitting as Special Judge by assignment of the  
Chief Justice pursuant to Section 110.(5)(b) of the Kentucky Constitution and  
KRS 21.580.

Department of Corrections. For the reasons stated below, we affirm.

On June 16, 2000, in Case 2000-CR-0321, Redman was indicted for flagrant nonsupport (Kentucky Revised Statutes (KRS) 530.050). On September 12, 2000, pursuant to a plea agreement with the Commonwealth, Redman was sentenced to a term of five-years imprisonment, probated five years. The judgment imposed various conditions of probation relating to Redman's child support obligation. The judgment did not specify that the sentence was to run concurrently with any other sentence previously imposed.

On July 30, 2001, Redman's Probation and Parole Officer filed an affidavit in support of revoking Redman's probation in the nonsupport case due to various probation violations. Following a hearing, on May 8, 2002, the trial court entered an order "continuing probation" subject to the condition that he "serve four (4) months to run concurrent with the present revocation sentence from the Third Division."<sup>2</sup> As a result, the four-month sentence ordered to be served in the

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<sup>2</sup> It appears that this is a reference to Case 99-CR-322-001. On February 4, 2000, the trial court entered final judgment in Case 99-CR-322-001 sentencing Redman to five-years imprisonment for first-degree possession of a controlled substance. Redman was granted probation, and the final judgment set forth various terms of probation. Redman subsequently violated the terms of his probation. On May 6, 2002 the trial court entered an order in the possession case "modifying probation." As relevant to this case, the order converted Redman's probation to conditional discharge subject to the condition that he serve an additional six months in the Kenton County Detention Center.

nonsupport case overlapped the six-month sentence ordered served in the drug possession case and was to be run concurrently with same.

On May 2, 2003, Redman's Probation and Parole Officer again filed an affidavit in support of revoking Redman's probation in the present case, i.e., the nonsupport case. Following a hearing, on June 4, 2003, the trial court entered an order revoking Redman's probation and ordering him to serve the five-year sentence previously imposed. The order granted him jail time credit of 209 days as of June 3, 2003. Herein lies the dispute which has precipitated this appeal.

On September 26, 2003, Redman filed a motion for additional jail time credit. While Redman captioned his motion "Motion for Jail Time Credit Pursuant to KRS 532.120(3)," we construe the motion as a motion for relief pursuant to Ky. R. Civ. P. 60.02(a). The motion argued that he was entitled for jail time credit for the period of March 8, 2002 - September 11, 2002; March 14, 2002 - October 15, 2002; and from May 1, 2003 to June 13, 2003, for a total of 450<sup>3</sup> days of credit as opposed to the 209 days of credit he had been awarded in the trial court's June 4, 2003 order.

On October 2, 2003, the trial court entered an order requiring Probation and Parole to recalculate Redman's

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<sup>3</sup> We note that elsewhere in the record, based upon these same dates, Redman calculates the additional credit to which he is entitled as 425 days.

entitlement to jail time credit. After reviewing the recalculation, on October 15, 2003, the trial court entered an order reiterating that Redman was entitled to only 209 days of credit.

On December 24, 2003, Redman filed a motion requesting that the trial court reconsider its October 15, 2003, order. On January 7, 2004, the trial court entered an order denying Redman's motion to reconsider and stating "Defendant has now presented insufficient allegations to warrant reconsideration of jail time credit, and there is no basis upon which this Court can grant relief."

On March 31, 2004, Redman filed another motion to reconsider. On April 7, 2004, the trial court entered an order again requesting that Probation and Parole calculate Redman's entitlement to jail time credit. On June 8, 2004, the trial court entered an order adopting a report filed by Probation and Parole which again calculated Redman's entitlement to jail time credit as 209 days. This appeal followed.

The Commonwealth contends that Redman's motion to reconsider was untimely. Thus, his attempt to appeal from the trial court's October 15, 2003, order was also untimely. We are forced to agree.

Following the entry of the trial court's October 15, 2003, order denying his motion for additional jail time credit,

Redman failed to file a timely appeal pursuant to Ky. R. Civ. P. 73.02(1)(a). Nor did Redman file a timely motion to alter, amend or vacate pursuant to CR 59.05. It is true that Redman attempted to file a CR 59.05 motion on December 24, 2003; however, as this motion was beyond the ten-day limitation period prescribed in the rule, it was of no effect in staying his time for filing an appeal to this Court. For this reason, we are without jurisdiction to consider this appeal.

For the foregoing reasons, it is hereby **ORDERED** that this appeal be, and it is, hereby **DISMISSED**.

ALL CONCUR.

ENTERED: April 1, 2005\_\_\_\_\_

/s/ John D. Miller\_\_\_\_\_  
JUDGE, COURT OF APPEALS

ALL CONCUR.

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