

RENDERED: NOVEMBER 22, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000208-MR

JANSAN CASEBIER

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 04-CR-00525

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON AND WINE, JUDGES; MILLER,¹ SPECIAL JUDGE.

MILLER, SPECIAL JUDGE: Jansan Casebier appeals from an order of the Daviess Circuit Court denying his motion for post-conviction relief pursuant to CR² 60.02. Casebier contends that because the judgment in the present case does not address whether his two-year sentence is to run concurrently or consecutively with a prior five-year conviction in Ohio Circuit Court, the sentences

¹ Retired Judge John D. Miller, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

² Kentucky Rules of Civil Procedure.

should be deemed to run concurrently pursuant to KRS³ 532.110(2). For the reasons stated below, we affirm.

On December 13, 2004, the Daviess Circuit Court, pursuant to a plea agreement, entered a final judgment in the present case sentencing Casebier to a total of two-years to serve upon a conviction for fleeing or evading police and first-degree wanton endangerment. At the time Casebier committed the Daviess County crimes, he was on probation for a felony conviction in Ohio County for which he had received a five-year sentence. The final judgment did not specifically state whether the present two-year sentence was to run concurrently or consecutively with the Ohio County five-year sentence.

On November 3, 2005, Casebier filed a motion for post-conviction relief pursuant to CR 60.02 alleging that because the judgment in the present case was silent on the issue of whether the present sentence was to run concurrently or consecutively with the prior Ohio County sentence, then by operation of KRS 532.110(2) the sentences should be deemed to run concurrently. Based upon the provisions of KRS 533.060(2), the circuit court denied the motion.

The statutory provision relied upon by Casebier in support of his argument, KRS 532.110(2), provides as follows:

³ Kentucky Revised Statutes.

If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve **unless the sentence is required by subsection (3) of this section or KRS 533.060 to run consecutively.** (Emphasis added).

KRS 533.060(2), the statutory provision relied upon by the circuit court in denying Casebrier's motion, states as follows:

When a person has been convicted of a felony and is committed to a correctional detention facility and released on parole or has been released by the court on probation, shock probation, or conditional discharge, and is convicted or enters a plea of guilty to a felony committed while on parole, probation, shock probation, or conditional discharge, the person shall not be eligible for probation, shock probation, or conditional discharge and the period of confinement for that felony shall not run concurrently with any other sentence. (Emphasis added).

KRS 533.060(2) is clear and unambiguous - if a defendant commits a felony while on probation for a prior felony, the sentence on the second felony may not be run consecutively with the sentence on the first felony. It follows that the sentences must be run consecutively. Hence, by operation of law, the sentence in the Daviess County case must be run consecutively with the sentence in the Ohio County case. Casebrier contends that KRS 533.060(2) does not apply to Class D felonies, the felony classification of his present felonies.

However, the section does not provide for such an exception, and we reject this argument. Casebrier also argues that the circuit court's failure to identify whether the sentences were to run concurrently or consecutively was a violation of Section 11 of the Kentucky Constitution and the Fourteenth Amendment of the United States Constitution. However, we conclude that these constitutional provisions do not confer such a right, and that this argument is without merit.

The Circuit Court accordingly did not err by denying Casebrier's motion for post-conviction relief.

For the foregoing reasons the judgment of the Daviess Circuit Court is affirmed.

ALL CONCUR.

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