

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-000710-MR

LARRY W. WILSON

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NOS. 03-CR-00383 & 04-CR-00211

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY,¹ SENIOR JUDGE.

VANMETER, JUDGE: Larry W. Wilson appeals from an order entered by the Henderson Circuit Court regarding the calculation of jail time credit. For the reasons stated hereafter, we affirm.

In October 2003, Wilson was arrested in Henderson County and spent twelve days in jail before he was released on bond. He subsequently failed to appear for

¹Senior Judge Lewis G. Paisley, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

court, and he was indicted for bail jumping. Meanwhile, in Indiana he was convicted and sentenced on other charges on June 29, 2005. He then was transported from Indiana to Henderson County on July 1, 2005, and he entered a guilty plea to the Henderson County charges on August 17. Wilson was sentenced on those charges to a total of six years, to run consecutive to any other sentences he received. He was given credit for the twelve days he spent in jail in 2003.

In December 2005, Wilson filed a motion seeking jail time credit for 125 days which he spent in custody in the Henderson County jail between his July 1 return from Indiana and November 2 when, we surmise, he was transported to another correctional facility. The court denied the motion, finding instead that “the time spent up to [Wilson's] sentencing on August 17, 2005, should be properly credited to the sentences he received in the state of Indiana in June of 2005.” This appeal followed.

KRS 532.120(3) provides:

Time spent in custody prior to the commencement of a sentence *as a result of the charge that culminated in the sentence* shall be credited by the court imposing sentence toward service of the maximum term of imprisonment. If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence shall be considered for all purposes as time served in prison.

(Emphasis added.) The court properly credited Wilson for the twelve days he spent in custody before he was released on bond in 2003. However, regardless of whether Wilson could make bond in Kentucky, it is clear that he was held in custody in the Henderson County jail between July 1 and August 17 because he was serving the sentence which

was imposed in Indiana on June 29 as a result of his conviction in that state. *See Houston v. Commonwealth*, 641 S.W. 42, 44-45 (Ky.App. 1982). Thus, the trial court acted properly when it credited the service of that time to the Indiana sentence rather than to the subsequent Kentucky sentence. KRS 532.120(3). Further, as nothing in the record suggests that the days Wilson served in Henderson County between August 17 and November 2, 2005 have not already been credited toward the service of his current Kentucky sentence, and since Wilson is not entitled to double credit for his service of time, the trial court did not err by declining to provide him with additional jail time credit for those days.

Finally, we cannot agree with Wilson's contention that the trial court erred by failing to appoint counsel to represent him below, as his postconviction claims were able to be resolved by an evaluation of the record without an evidentiary hearing. Hence, the appointment of counsel was not required. *See Fraser v. Commonwealth*, 59 S.W.3d 448, 452-53 (Ky. 2001).

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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