

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001050-MR

JAMES R. HAZELWOOD

APPELLANT

v. APPEAL FROM WASHINGTON CIRCUIT COURT  
HONORABLE ALLAN RAY BERTRAM, JUDGE  
ACTION NO. 96-CR-00012

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: HOWARD AND STUMBO, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

STUMBO, JUDGE: This appeal is brought from an order denying Hazelwood's (Appellant) motion for additional jail time credit. Having reviewed the record and all the arguments put forth by Appellant, we find that the judgment was final in May of 2004 and, thus, this appeal is untimely.

The facts surrounding this case are extensive, as are the number of motions filed by Appellant. In January 1987, Appellant was sentenced to ten years on one count

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

of first-degree robbery and ten years on one count of first-degree assault by the Marion Circuit Court. These two sentences were to run concurrently. He was released on parole and then re-jailed twice between the years of 1992 and 1996.

On August 5, 1996, he was sentenced to ten years imprisonment in Marion Circuit Court for various charges. There were three charges involved and each was enhanced by the Persistent Felony Offender status due to his 1987 conviction.

On December 12, 1996, the Washington Circuit Court sentenced him to a term of fifteen years in prison on one count of first-degree robbery. This sentence was also ordered to run concurrently with the Marion County sentence. The judgment did not specify whether the Washington County sentence included the 1987 Marion County sentence. It was ultimately decided by that court that the judgment included the 1987 sentence, so all the 1996 sentences were merged with the 1987 sentence.

On June 7, 1999, Appellant successfully challenged his 1987 conviction via post conviction relief. That case was ultimately dismissed without retrial due to the death of the victim and sole witness. Because the 1987 conviction served as the basis for the Persistent Felony Offender enhancement of the August 1996 charges, a new plea agreement and order regarding the 1996 sentences were executed. The PFO charges were dropped from the Marion County cases and the Washington County sentence was reduced to fourteen years. The order stated that the Marion County and Washington County sentences were to run concurrently with the cases "listed herein". The cases

listed the 1996 sentences were to run concurrently with only the 1996 sentences. Nothing was mentioned about the 1987 sentence.

Appellant was prematurely released from prison on September 20, 1999, because the prison calculated his time served as beginning with the 1987 sentence. They believed all his sentences were to run concurrently with the 1987 sentence and that he had served out all sentences.

It was later decided that this had been an error and a Warden's Warrant was issued for Appellant. Appellant was then returned to prison on November 15, 1999. Appellant believed he should have been given more jail time credit and began filing motions to that effect.

On November 24, 2002, the Washington Circuit Court considered a CR 60.02 motion in which Appellant claimed he was entitled to more jail time credit. He argued that his 1996 sentences should have run concurrently with his 1987 sentence and that the time he served for it should have been applied to the 1996 sentences. The circuit court denied the motion. In doing so, the court made the following finding in reference to the plea agreement referred to above:

The Defendant's new agreement included reduced concurrent sentences including fourteen years for Washington County # 96-CR-00012. The new plea agreement **does not** provide for the sentences to run concurrently with the sentence in Marion County # 86-CR-00024 which had been dismissed prior to the new agreement. The defendant and the Commonwealth specifically discussed that term and did not include it in their agreement (Emphasis added).

Hazelwood moved for reconsideration of that order and then appealed to this Court. In an order dated May 4, 2004, this Court dismissed the appeal as untimely brought since the motion for reconsideration had been filed too late and the judgment had become final. CR 59.05.

The appeal before the Court now raises precisely the same issue of jail credit that was considered by the Washington Circuit Court back in 2002. Nothing new is raised and the judgment of that court became final long ago. The May 2004 order dismissing the appeal became the law of the case and, as such, the issue of more jail time credit cannot be addressed again. “The law-of-the-case doctrine describes a principle which requires obedience to appellate court decisions in all subsequent stages of the litigation.” *Buckley v. Wilson*, 177 S.W.3d 778, 781 (Ky. 2005). “A final decision of this Court, whether right or wrong, is the law of the case and is conclusive of the questions therein resolved. It is binding upon the parties, the trial court, and the Court of Appeals.” *Williamson v. Commonwealth*, 767 S.W.2d. 323, 325 (Ky. 1989).

We therefore hold that the issue of jail time credit has been decided and affirm Appellant’s current appeal.

ALL CONCUR.

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