

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001633-MR

GREGORY CASEY MADDIX

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT  
HONORABLE C. DAVID HAGERMAN, JUDGE  
ACTION NO. 02-CR-00067

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \*\*

BEFORE: HOWARD AND MOORE, JUDGES; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

MOORE, JUDGE: Gregory Casey Maddix, *pro se*, appeals the denial of his Kentucky Rule of Civil Procedure (CR) 60.02 motion in which he sought credit, pursuant to Kentucky Revised Statute (KRS) 532.120(3), for time spent in a Florida jail while awaiting extradition to Kentucky and while incarcerated on a Florida charge. While Maddix was in the Florida jail, he was on parole from the aforementioned conviction and

---

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

sentence imposed by Boyd Circuit Court. After a careful review of the record, we affirm the denial of his motion.

### **I. FACTUAL AND PROCEDURAL BACKGROUND**

In October 2002, Maddix was convicted and sentenced in Boyd Circuit Court to a term of imprisonment of six years for various drug trafficking and possession offenses. The trial court gave Maddix credit for 267 days spent in jail while awaiting trial. In August 2004, Maddix was granted parole and released. However, in May 2005, Maddix was arrested in Florida on a Florida charge.<sup>2</sup> At that time, Florida officials realized that Kentucky had issued a warrant for Maddix arrest for allegedly violating his Kentucky parole, and held Maddix pursuant to that warrant as well. In March 2006, after being extradited to the Commonwealth, Maddix's parole was revoked, and he was ordered to serve the remainder of his sentence. On July 24, 2006, Maddix moved the trial court, pursuant to CR 60.02, for credit regarding the time he spent in the Florida jail while awaiting extradition. The trial court denied Maddix's motion stating that he should have directed his request to the Kentucky Parole Board.

### **II. STANDARD OF REVIEW**

The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000). A trial court has abused its discretion if its decision was arbitrary,

---

<sup>2</sup> The record does not reveal the nature of the Florida charge, the length of Maddix's imprisonment in Florida or whether Maddix posted or attempted to post bond on his Florida charges.

unreasonable, unfair, or unsupported by sound legal principles. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted).

### III. ANALYSIS

In *Duncan v. Commonwealth*, 614 S.W.2d 701, 702 (Ky. App. 1980), this Court held that a post-judgment request for jail time credit per KRS 532.120(3) may be brought pursuant to CR 60.02. So, contrary to the trial court's assertion that Maddix should have sought relief from the parole board, the trial court was the proper forum for Maddix to file his motion. However, the *Duncan* Court stated that a CR 60.02 motion, for a mistake, must be brought within one year of the date of the judgment. *Id.* Based on this holding, Maddix was barred from raising this issue before the trial court due to the fact he filed his CR 60.02 motion nearly four years after the entry of his judgment of conviction. Therefore, Maddix's CR 60.02 motion was not timely filed, and, as a result, the trial court correctly denied it.

Despite the fact that Maddix's motion was untimely, we will briefly address the merits of his appeal. In his brief, he argues that, pursuant to KRS 532.120(3), he should receive credit for time spent while incarcerated in Florida awaiting extradition to Kentucky. However, Maddix was not entitled to credit per KRS 532.120(3) because he did not meet the statute's two requirements. According to the statute, a defendant is only entitled to credit for time spent in jail in lieu of bond while awaiting trial and that the defendant is only entitled to credit if he was incarcerated on the charge for which he is

seeking credit. KRS 532.120(3). As previously mentioned, the trial court actually gave Maddix credit for time spent in jail while he awaited trial on the underlying Kentucky offenses.

In addition to the insurmountable problems presented by KRS 532.120, it is imperative to note that Maddix's jail time in Florida does not derive from the charge that led to his Kentucky sentence. Maddix argues that *Polsgrove v. Kentucky Bureau of Corrections*, 559 S.W.2d 736 (Ky. 1977), applies. However, the *Polsgrove* case is not applicable. The holding in *Polsgrove* only applies to the time spent in jail prior to sentencing on the underlying offense. *Id.* at 737. In contrast, Maddix was a parolee incarcerated in another state who had allegedly violated his Kentucky parole. As such, KRS 439.344 applied, and that statute reads, "[t]he period of time spent on parole shall not count as a part of the prisoner's maximum sentence except in determining parolee's eligibility for a final discharge from parole as set out in KRS 439.354." The Supreme Court of Kentucky has held, pursuant to that statute, that a parolee, who has been incarcerated in another state prior to revocation of his Kentucky parole, is not entitled to receive credit towards his Kentucky sentence for the time spent incarcerated in the other state. *Kassulke v. Brisco-Wade*, 105 S.W.3d 403, 408 (Ky. 2003).

Based on the reasons aforementioned, we find that the trial court did not abuse its discretion. Thus, the order of the Boyd Circuit Court denying Maddix's CR 60.02 motion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gregory C. Maddix, pro se  
Munfordville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

David W. Barr  
Assistant Attorney General  
Frankfort, Kentucky