

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000685-MR

RUSSELL L. COLLINS

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE GREGORY A. LAY, JUDGE  
ACTION NO. 03-CR-00265

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: THOMPSON AND WINE, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

WINE, JUDGE: Russell L. Collins appeals, *pro se*, from the Laurel Circuit Court's denial of his request to reduce his sentence by five hundred and eighty-three (583) days for jail time credit per KRS 532.120(3). For the following reasons, we remand the case to the Laurel Circuit Court for entry of an order clarifying that Collins is entitled to five

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

hundred and eighty-three (583) days credit for time served prior to sentencing in Indictment No. 03-CR-00265.

Collins filed a motion on January 17, 2006, asking the Laurel Circuit Court for five hundred and seventy-eight (578) days of pretrial custody credit. The Laurel Circuit Court “overruled” the motion, noting that to adjust would be in essence giving Collins double credit for time served. Collins filed another motion on March 10, 2006, asking for “Clarification of Judgment and Order Pursuant to CR 60.01.” Collins’s argument was again that he is entitled to five hundred and seventy-eight (578) days of credit for time served. His motion was “overruled.”

On appeal, Collins argues he is entitled to five hundred and eighty-three (583) days of jail time credit and the Laurel Circuit Court abused its discretion by not applying all of that time as credit to his sentence for Indictment No. 03-CR-00265. We agree.

In general, the parties do not dispute the facts of this case. On April 24, 2003, Collins was originally arrested in Laurel County and charged with receiving stolen property valued over \$300.00. Collins served eight (8) days in jail prior to posting bail on May 1, 2003.

Then on June 30, 2003, Collins was arrested in Knox County and charged with being a convicted felon in possession of a handgun. He was released on July 14, 2003, after posting bond. On October 10, 2003, he was indicted in Knox County under Indictment No. 03-CR-00145. On October 17, 2003, he was indicted in Laurel County

under Indictment No. 03-CR-00265. Warrants were issued for his arrest. He was arrested on March 17, 2004. Since Knox County does not have a jail, defendants are housed in jails in surrounding counties. Collins was transported to the Clay County Detention Center on the Knox County indictment, where he spent at least two hundred and seventy-seven (277) days before being transferred to the Laurel County Jail where he spent one hundred and ninety-four (194) days. While in the Laurel County Jail, he entered a plea of guilty on the Knox County indictment on June 2, 2005.

On June 29, 2005, the Knox Circuit Court sentenced Collins on Indictment No. 03-CR-00145, to one-year imprisonment for being a convicted felon in possession of a handgun. The court also found that Collins was entitled to four hundred and eighty-six (486) days of jail time credit for time served on this offense. Thus, the Knox Circuit Court ordered Collins to serve one hundred and twenty-one (121) days less than he had already served while awaiting trial. In addition, the Knox Circuit Court ordered the sentence for Indictment No. 03-CR-00145 to run concurrent with whatever sentence Collins received in the future on Indictment No. 03-CR-00265 in Laurel County.

Even though he had served out his one-year sentence handed down by the Knox Circuit Court on Indictment No. 03-CR-00145, Collins remained incarcerated for another eighty-nine (89) days from June 29, 2005, through September 26, 2005, awaiting to be sentenced in Laurel County for Indictment No. 03-CR-00265. Thereafter, on September 26, 2005, the Laurel Circuit Court sentenced Collins to a term of five (5)

years' imprisonment for receiving stolen property over \$300.00. The court's judgment indicates Collins was entitled to zero (0) days credit for time served.

As a preliminary matter, it appears to this Court that the Knox Circuit Court erred in directing its sentence to run concurrently with the sentence imposed in the Laurel Circuit Court case. KRS 533.060(3) reads, "When a person commits an offense while awaiting trial for another offense, and is subsequently convicted or enters a plea of guilty to the offense committed while awaiting trial, the sentence imposed for the offense committed while awaiting trial shall not run concurrently with confinement for the offense for which the person is awaiting trial." In *Devore v. Commonwealth*, 662 S.W.2d 829, 830-31 (Ky. 1984), the Kentucky Supreme Court held that this statute controls over the more general statute permitting multiple sentences to be run concurrently.

Such is the case at hand. Collins was out on bond for the Laurel County charges when he was arrested in Knox County for being a convicted felon in possession of a handgun. And while the Knox Circuit Court's judgment indicates that Collins's sentence on Indictment No. 03-CR-00145 shall run concurrent with his sentence in Laurel County, the Laurel Circuit Court's judgment on Indictment No. 03-CR-00265 is silent.<sup>2</sup> Thus, Collins's sentences should have been run consecutively, not concurrently.

However, the Commonwealth has not appealed from either judgment, so this issue is not directly before this Court. We note that the application of KRS 533.060 "is essentially administrative in nature, and is certainly properly included in the duties of

<sup>2</sup> It is helpful to note that Judge Gregory A. Lay is the circuit judge for both Laurel and Knox Counties. Judge Lay signed the judgments in both of Collins's cases.

the Corrections Cabinet.” *Riley v. Parke*, 740 S.W.2d 934, 936 (Ky. 1987). Furthermore, the error can also be corrected by the trial court. *See Cardwell v. Commonwealth*, 12 S.W.3d 672 (Ky. 2000).

Regardless of whether the sentences were improperly directed to run concurrently, we agree with Collins that he was entitled to credit for the time he served awaiting sentencing. KRS 532.120(3) directs that, “[t]ime 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.” In his order denying Collins’s motion to adjust credit for pre-sentence confinement, the Laurel Circuit Court indicates that Collins was given eight (8) days credit for days served on the indictment plus an additional three hundred and eleven (311) days served on charges against him in Clay County. The Laurel Circuit Court’s order also refers to Collins serving time for charges arising out of Clay County. However, Collins denies having any charges in Clay County. Further, there is nothing in the record that shows Collins was serving time for charges against him arising out of Clay County. Rather, it appears from the record before us that Collins was incarcerated in the Clay County Jail awaiting disposition on the Knox County charges.

After a thorough review of the record, it appears, even with the sentences running consecutively, that Collins is entitled to five hundred and eighty-three (583) days of credit for time served awaiting sentencing on Indictment No. 03-CR-00265 in Laurel County. Collins spent eight (8) days incarcerated after being arrested on April 24, 2003,

in Laurel County. He should be credited those eight (8) days. In addition, the Knox Circuit Court recognized that Collins was entitled to four hundred and eighty-six (486) days credit for time served waiting sentencing on Indictment No. 03-CR-00145. Pursuant to KRS 532.120(3), the four hundred and eighty-six (486) days should be credited to both the Knox County charges and the Laurel County charges regardless of whether the sentences were to run concurrent or consecutive, as Collins was in jail awaiting trial on both indictments in the two separate counties for that period.

Finally, Collins remained incarcerated for eighty-nine (89) days after he had been sentenced by the Knox Circuit Court while awaiting trial in Laurel County. Since Collins was further jailed while awaiting trial in Laurel County, he is also entitled to those eighty-nine (89) days credit toward his sentence. Thus, in this unique fact situation, the eight (8) days Collins spent in jail after his arrest, the four hundred and eighty-six (486) days of uninterrupted time spent awaiting trial on both convictions, and the eighty-nine (89) days served after he was sentenced in Knox County, but just prior to being sentenced in Laurel County, entitles Collins to a total of five hundred and eighty-three (583) days credit.

Accordingly, we remand the case to the Laurel Circuit Court for entry of an order, in Indictment No. 03-CR-00265, granting Collins credit for time served prior to sentencing in the amount of five hundred and eighty-three (583) days.

ALL CONCUR.

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