

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000226-MR

ISAAC BASS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE W. DOUGLAS KEMPER, JUDGE
ACTION NOS. 04-CR-002653 & 05-CR-000247

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** * ** * **

BEFORE: KELLER AND TAYLOR, JUDGES; HENRY,¹ SENIOR JUDGE.

KELLER, JUDGE: Isaac Bass appeals from the Jefferson Circuit Court's Order denying his motion for additional jail time credit. For the reasons set forth below, we affirm.

FACTS

The parties do not dispute the underlying salient facts. On July 24, 2004, Bass visited his ex-wife, Kristy Taylor (Taylor). During the visit, Taylor thought that Bass was acting strangely; therefore, she made a telephone call seeking emergency

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

medical assistance and a telephone call seeking assistance from the police. When the police arrived, two officers attempted to get Bass to leave Taylor's bedroom; however, Bass was uncooperative and a struggle ensued. The officers ultimately subdued and arrested Bass, charging him with a number of offenses. While in jail awaiting trial on those charges, Bass was served with outstanding warrants for failure to pay child support. It appears from the record that Bass pled guilty to misdemeanor non-support and received a sentence of twelve months' imprisonment. Bass stated in his brief that he pled guilty to the non-support charges, in part, based on an agreement that his sentence would run concurrently with any sentence he might receive related to the July 24, 2004, incident. We note that the record does contain mention of Bass's guilty plea to the misdemeanor non-support charges; however, the record does not contain any evidence that the Commonwealth or the sentencing court agreed that the resulting sentence would run concurrently with any sentence Bass might receive related to the July 24, 2004, incident.

Following trial regarding the events of July 24, 2004, a jury convicted Bass of illegal possession of a controlled substance in the first degree, assault in the third degree, fleeing/evading a police officer in the second degree, and violation of a protective order. Pursuant to a post-trial plea agreement entered on March 3, 2006, the trial court entered a judgment and sentenced Bass to a total of seven years' imprisonment. We note that the plea agreement indicates that the sentences arising from the July 24, 2004, incident were to run concurrently; however, there is no mention of the misdemeanor non-support convictions. Bass then sought jail time credit for the entire time he had been

incarcerated, which included the time he was incarcerated for the misdemeanor non-support convictions. A probation and parole officer determined that Bass was only entitled to jail time credit for the 248 day period he was in jail awaiting trial on the charges that arose from the July 24, 2004, incident. The probation and parole officer stated that Bass was not entitled to jail time credit for the time he was incarcerated related to the misdemeanor non-support conviction. Based on the probation and parole officer's recommendation, the trial court entered an order denying Bass's motion for additional jail time credit. It is from this order that Bass appeals.

STANDARD OF REVIEW

Whether Bass is entitled to additional jail time credit is a question of law; therefore, the standard of review is *de novo*. See *A & A Mechanical, Inc. v. Thermal Equipment Sales, Inc.*, 998 S.W.2d 505, 509 (Ky.App. 1999).

ANALYSIS

In his brief, Bass argues that the trial court's denial of his motion for additional jail time credit amounted to an abuse of discretion. In support of his position, Bass primarily cites to KRS 532.110, KRS 532.120, and *Lemon v. Corrections Cabinet*, 712 S.W.2d 370 (Ky.App. 1986). KRS 532.110 provides that:

(1) When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous sentence of probation or conditional discharge has been revoked, the multiple sentences shall run concurrently or consecutively as the court shall determine at the time of sentence, except that:

(a) A definite and an indeterminate term shall run concurrently and both sentences shall be satisfied by service of the indeterminate term[.]

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.

We note that conviction of a felony results in a sentence for an indeterminate term, KRS 532.060(1), while conviction of a misdemeanor results in a sentence of a definite term.

KRS 532.090. Reading these two statutes together, sentences for imprisonment for a felony and a misdemeanor shall run concurrently; however, jail time credit is only mandatory when the time served is related to the crime for which a sentence is ultimately imposed. Bass argues that, under KRS 532.110(1), his misdemeanor non-support convictions and his subsequent convictions merged and therefore, the time he served for the misdemeanor non-support convictions should count as time served against his subsequent convictions. However, "KRS 532.120(3) is only mandatory if the accused spends time in custody relating to a charge which ultimately culminates in a conviction.

Therefore, a trial court is not usually required to give credit for time served as a result of other charges [S]uch credit lies within the sound discretion of the trial court[.]"

Lemon v. Corrections Cabinet, 712 S.W.2d 370, 371 (Ky.App. 1986). See also *Belt v.*

Commonwealth, 2 S.W.3d 790, 794 (Ky.App. 1999). The trial court herein chose not to

allocate credit to Bass for the time he served for his misdemeanor non-support convictions, and it was not compelled to do so. Therefore, we affirm the trial court's denial of Bass's request for additional jail time credit.

ALL CONCUR.

BRIEF FOR APPELLANT:

Isaac Bass, *pro se*
Sandy Hook, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

Courtney J. Hightower
Assistant Attorney General
Frankfort, Kentucky