

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001835-MR

WALLACE REDD III

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NOS. 97-CR-00197 & 98-CR-00071

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * ** * **

BEFORE: ACREE AND STUMBO, JUDGES; LAMBERT,¹ SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: Wallace Redd III appeals from the September 9, 2009, order of the Franklin Circuit Court, denying his motion to clarify his jail credit. Because we hold that Appellant's appeal is untimely, we dismiss.

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

On September 5, 2000, Appellant received a total sentence of five years incarceration for possession of a controlled substance in the first degree, two counts of assault in the second degree, and resisting arrest.² The sentences were probated for a period of five years and the judgment noted that Appellant was entitled to a credit of 153 days of service.

On March 7, 2005, an order was entered revoking Appellant's probation and imposing the five year sentence. The revocation order further remanded Appellant to the custody of the Department of Corrections for 12 months for another offense of assault in the fourth degree. The order gave Appellant a combined total credit of 417 days of service.

On February 19, 2009, Appellant filed a pro se "Motion for Jail Credit" in which he requested jail credit for time spent at two inpatient treatment facilities prior to the September 5, 2000 judgment. On June 2, 2009, an "Order Correcting Jail Credit" was entered in which the trial court granted Appellant an additional 364 days of jail credit and stated that his combined total jail credit was for 517 days.

On June 25, 2009, Appellant filed a pro se "Motion for Probation Street Time Credit." This motion was denied in an order entered on August 5, 2009. On August 17, 2009, Appellant filed a motion styled "Motion pursuant to KRS 532.230(3) Requesting Court to Enter an Order to the Department of Corrections (Clarifying Movant's (Correct) Amount of (Combined Total Jail Time

² These charges were the result of two separate indictments, and therefore two separate orders were entered.

Credit”(sic). In that motion, Appellant asked the trial court to clarify its June 2, 2009, Order Correcting Jail Credit. Appellant’s motion was denied in an order entered on September 9, 2009. This appeal followed.

On appeal, Appellant argues that the trial court erred when it calculated his jail credit. In response, the Commonwealth maintains that Appellant did not timely appeal from the trial court’s June 2, 2009, order and the appeal should therefore be dismissed. In response to the Commonwealth’s argument, Appellant argues that all motions were connected, by virtue of their shared issue, and that the source of the problem is the trial court’s June 2, 2009, order.

After carefully reviewing the trial court record and the parties’ briefs, we conclude that Appellant’s appeal is untimely. Although Appellant purports to appeal from the September 9, 2009, order, his argument on appeal addresses the calculation of jail credit decided in the trial court’s June 2, 2009, order.³

Appellant received substantial relief in the trial court’s June 2, 2009, order. If he was dissatisfied with that relief, his avenue was to file either a motion to alter, amend, or vacate that order within 10 days, or a notice of appeal within 30 days. CR⁴ 59.05 and CR 73.02.

As a matter of public policy, Kentucky courts have exercised leniency in their treatment of pro se parties. However, the time for filing a notice of appeal pursuant to CR 73.02(2) is mandatory and subject to strict compliance. *Fox v.*

House, 912 S.W.2d 450 (Ky.App. 1995). Although the running of the time for an

³ Appellant failed to make any arguments as to the September 9, 2009, order.

⁴ Kentucky Rules of Civil Procedure.

appeal can be tolled, appellant failed to timely seek such relief and he has failed to comply with the time requirements of CR 73.02.

Accordingly, we hold that Appellant's notice of appeal was untimely filed. For the foregoing reasons, Appeal No. 2009-CA-001835-MR shall be, and is hereby ordered, DISMISSED.

ALL CONCUR.

ENTERED: October 15, 2010

/s/ Joseph E. Lambert
Senior Judge, Court of Appeals

BRIEFS FOR APPELLANT:

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