

RENDERED: July 31, 1998; 10:00 a.m.  
NOT TO BE PUBLISHED

NO. 97-CA-3151-MR

NORMAN SCOTT SHARP

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT  
HONORABLE WILLIAM F. STEWART, JUDGE  
ACTION NO. 90-CR-00075

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: HUDDLESTON, JOHNSON, and MILLER, JUDGES.

MILLER, JUDGE. Norman Sharp (Sharp) appeals pro se from an order of the Shelby Circuit Court entered on November 18, 1997, denying his motion for jail-time credit brought pursuant to Ky. Rev. Stat. (KRS) 532.120. We affirm.

In August 1990, the Shelby County Grand Jury indicted Sharp on two felony counts of first-degree rape, one felony count of first-degree sodomy, and two felony counts of sexual abuse involving his two young stepdaughters. In September 1991, a jury found Sharp guilty on all five counts and recommended consecutive

sentences totaling eighty-five (85) years. After the trial court issued a final judgment sentencing him consistent with the jury's recommendation, Sharp appealed. At that time, Sharp was released from custody on a \$50,000.00 cash bond pending appeal.

On March 14, 1992, Sharp was arrested in Franklin County on a charge of rape, and placed in the Franklin County Detention Center. On March 16, 1992, the Shelby Circuit Court issued a detainer warrant of arrest for Sharp for violating the conditions of his appeal bond, and the detainer was served on the Franklin County Detention Center.

On March 18, 1993, the Kentucky Supreme Court rendered a published opinion reversing Sharp's conviction in Shelby County and remanding for a new trial. See Sharp v. Commonwealth, Ky., 849 S.W.2d 542 (1993). While awaiting retrial in Shelby County, Sharp pleaded guilty to third-degree rape in Franklin County and was sentenced to serve five years in prison. On March 6, 1995, Sharp pleaded guilty in Shelby County to two counts of first-degree sexual abuse pursuant to a plea agreement.<sup>1</sup> According to the plea agreement, the Commonwealth agreed to dismiss the two counts of first-degree rape and first-degree sodomy, and recommend sentences of five years on each of the two sexual abuse counts to run consecutively with each other for a total of ten years. These sentences were to run consecutively with the five-year sentence out of Franklin County. The Commonwealth also

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<sup>1</sup>Sharp states that he also pled guilty to one count of unemployment insurance fraud and received a five-year sentence based on an indictment out of Anderson County.

recommended that the ten-year sentence be probated with a condition that Sharp enroll in and complete the Sexual Offenders Treatment Program offered by the Department of Corrections. On April 6, 1995, the trial court sentenced Sharp consistent with the Commonwealth's recommendation by suspending the ten-year sentence and placing Sharp on probation for a period of five years. The trial court gave Sharp no days credit for jail-time toward service of the sentence. The detainer issued earlier was released based on the judgment of probation.

In September 1997, Sharp filed a motion for jail-time credit in Shelby Circuit Court seeking credit for the time he spent in custody prior to the final judgment of conviction. In October 1997, Sharp supplemented his motion with an additional memorandum. On November 18, 1997, the trial court denied the motion. This appeal followed.

Sharp contends that he is entitled to receive jail-time credit on his ten-year sentence for the period of time he was incarcerated from March 1993, when his appeal bond was revoked, until April 1995, when final judgment was entered.<sup>2</sup> Sharp relies on KRS 197.041, which provides as follows:

If a defendant is confined in the penitentiary during the pendency of an appeal and, on reversal, is again convicted, he shall be given credit for the period so confined in determining his date of eligibility for parole and his date of release by expiration of sentence.

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<sup>2</sup>Sharp calculates this period as three years and twelve days. The correct calculation is actually just over two years.

The trial court denied the motion because "the sentence on the guilty plea was probated by the Court's order entered April 6, 1995, therefore jail time credit not being an issue." The problem with Sharp's argument is that he has never been sentenced to imprisonment on the Shelby County judgment. He remains on probation at this time on this conviction. KRS 532.120(3) states: "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 (emphasis added)." Jail-time credit is relevant only to a period of incarceration on a sentence. Because the ten-year term of imprisonment was suspended and Sharp was placed on probation, any credit for jail-time is not relevant. Sharp's request for jail-time credit is premature. Consequently, the trial court did not err in denying the motion.

In addition, the record suggests that Sharp was incarcerated during this period on the charges from Franklin County. Under KRS 532.120(3), a defendant is entitled to credit for jail-time spent "as a result of the charge that culminated in the sentence." See Handley v. Commonwealth, Ky. App., 653 S.W.2d 165, 166 (1983). KRS 532.120(4) allows credit for time spent in jail on a sentence for which a detainer was lodged only "if a person has been in custody due to a charge that culminated in a dismissal, acquittal, or other disposition not amounting to a conviction." The Franklin County charges resulted in a

conviction, so the time spent during the period for which Sharp now seeks credit was counted toward service of his Franklin County conviction.

In addition to the premature status of the request, based on the current record, Sharp has not established entitlement to the jail-time credit he seeks. Sharp's allegation that the trial court's failure to give him jail-time credit on the Shelby County conviction delayed the date on which the Franklin County sentence commenced is not supported by the record.

For the above-stated reasons, we affirm the order of the Shelby Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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