

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003249-MR

WILLIAM B. ADAMS

APPELLANT

V. APPEAL FROM McCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 95-CR-193

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

* * * * *

BEFORE: GUDGEL, Chief Judge; COMBS and GARDNER, Judges.

GUDGEL, CHIEF JUDGE: Appellant William Adams appeals pro se from an order entered by the McCracken Circuit Court denying his motion for jail time credit based upon KRS 532.120. We affirm.

Adams was arrested on April 29, 1995, for shooting his ex-wife in the chest, and he was subsequently indicted on one felony count of first-degree assault. In July, Adams filed a motion seeking a reduction of his \$25,000 full cash bond pursuant to RCr 4.40. The trial court conducted a hearing and granted the motion in part, allowing Adams to secure the bond by paying ten percent in cash and guaranteeing the remaining \$22,500 through an approved surety. Adams posted the revised bond and was released from jail on July 21.

On October 20, Adams entered a guilty plea to the amended charge of second-degree assault pursuant to a plea bargaining agreement and the Commonwealth's recommendation of ten years' imprisonment. On January 26, 1996,¹ after considering the presentence investigation report, the court sentenced Adams in accordance with the recommendation and gave him credit for sixty-eight days served. On April 16, the court entered an agreed order amending the final judgment and sentence to state that Adams would be given credit for eighty-eight days served.

On August 13, 1997, Adams filed a motion pursuant to KRS 532.120 seeking a credit for 370 days served. The court denied the motion and reaffirmed the previous credit of eighty-eight days. This appeal followed.

Adams argues that he is entitled to receive jail time credit of 370 days. We disagree.

KRS 532.120(3) states in part 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." (Emphasis added.) KRS 520.010(2) defines "custody" as "restraint by a public servant pursuant to a lawful arrest, detention, or an order of court for law enforcement purposes, but does not include supervision of probation or parole

¹Adams was sentenced and placed in jail on this date, but the final judgment and sentence was not officially entered into the record until February 2, 1996.

or constraint incidental to release on bail[.]” (Emphasis added.) Hence, Adams clearly was not “in custody” while he was out of jail on bail between July 21, 1995, and January 26, 1996, and he is not entitled to jail credit for that period. See, e.g., Prewitt v. Wilkinson, Ky. App., 843 S.W.2d 335 (1992) (addressing the manner in which release on bail affects jail time credit).

Moreover, we are not persuaded that a different result is compelled by a computer document, apparently generated by the McCracken County Jail and entitled “Inmate Book-In Sheet,” which was attached as an exhibit to Adams’ motion. Although one line in the document appears to indicate that Adams was in jail for 370 days, the document neither explains how this calculation was reached nor reflects the fact that Adams was released on bail. Instead, the record indicates that Adams was arrested on April 29, 1995, and finally released on May 3, 1996.

Apparently, Adams remained in the McCracken County Jail between his January 26, 1996, sentencing date and his final transfer to a state penal institution on May 3, 1996, during which time he received postjudgment credit from the department of corrections toward the service of his sentence. Moreover, the 370-day jail time figure clearly incorporates the entire period between Adams’ initial entry on arrest and his final exit upon transfer to a state institution, even though he in fact was released on bail during much of this time period. As Adams was entitled to a credit only for the actual time he spent in jail

prior to final sentencing, the trial court did not err by denying his motion for a 370-day jail credit. See KRS 532.120.

The court's order is affirmed.

ALL CONCUR.

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