

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001967-MR
AND
NO. 1997-CA-003279-MR

JOHN FRAVEL

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JOHN R. ADAMS, JUDGE
INDICTMENT NO. 93-CR-00600

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** * * * **

BEFORE: EMBERTON, JOHNSON, and KNOX, JUDGES.

KNOX, JUDGE: John Fravel (Fravel) brings this appeal from two Fayette Circuit Court orders denying his motion for credit on time served and his motion for relief filed pursuant to Kentucky Rule of Civil Procedure (CR) 60.02. After review of the record, we affirm.

In 1990, Fravel was convicted of larceny, fraud, and passing forged checks in Orange County, Florida. After being released on parole in Florida, Fravel came to Kentucky. Between June 11-15, 1993, Fravel cashed four checks in Lexington, Kentucky, that had been written on a closed bank account in

Florida. In August 1993, the Fayette County Grand Jury indicted Fravel on four felony counts of criminal possession of a forged instrument in the second degree (KRS 516.060). The Fayette Circuit Court issued a warrant of arrest for Fravel on the felony indictment.

After learning that Fravel was in prison in Florida, the Fayette County Commonwealth's Attorney filed a request for temporary custody with the Florida prison authorities in August 1993 under the Interstate Agreement on Detainers (KRS 440.450 et seq.). Fravel was returned to Kentucky in October 1993 for trial on the Fayette County indictment. On January 14, 1994, Fravel entered a guilty plea on the four counts of criminal possession of a forged instrument pursuant to a plea agreement with the Commonwealth. Under the agreement, the Commonwealth recommended a sentence of five years on each of the four counts with the sentences on the first three counts running concurrently with each other, but consecutively to the sentence on the fourth count, for a total sentence of ten years. On February 14, 1994, the trial court sentenced Fravel to serve ten years consistent with the Commonwealth's recommendation and ordered the sentence to run consecutively to "any other previous felony sentence the defendant must serve." Consistent with the calculation prepared by the Division of Probation and Parole in the Presentence Investigation Report (PSI), the trial court awarded Fravel one hundred and twenty-three (123) days presentence jail-time credit on the ten-year felony sentence. See KRS 532.120. Fravel then

was returned to Florida to continue serving his prison sentence on the 1990 Florida conviction.

On June 7, 1994, Fravel completed serving the sentence on his 1990 Florida felony conviction. However, he was held in the Broward County Jail in Florida based on a Kentucky detainer filed by Fayette County and several other warrants from Florida and New York. On January 18, 1996, Fravel pled guilty in Broward County, Florida, to uttering a forged instrument, forgery, and grand theft in the third degree. He was sentenced to serve five years to run concurrent with the 1994 Kentucky sentence. In November 1996, Fravel was released on the 1996 Florida conviction after receiving credit for the time spent in jail between June 1994 and January 1996. On November 1, 1996, Fravel returned to Kentucky to begin serving the ten-year sentence on the 1994 Kentucky conviction.

On June 25, 1997, Fravel filed a Motion for Credit on Time Served seeking credit on his Kentucky sentence for the time spent incarcerated in Florida following release on his 1990 Florida conviction. The trial judge wrote a letter to the Division of Probation and Parole requesting an investigation into Fravel's motion and his request for additional jail-time credit. On July 11, 1997, Angela Tolley, the Probation and Parole Officer who had prepared Fravel's initial PSI report, responded by letter to Fayette Circuit Court Judge John Adams. She indicated that Fravel had been detained in Florida in June 1994 on several warrants, as well as, the Kentucky detainer. She also stated that Fravel had already received credit on the 1996 Florida

sentence for the same period he was seeking credit on the Kentucky sentence. On July 24, 1997, Judge Adams denied the motion stating Fravel was not entitled to credit beyond the one hundred and twenty-three (123) days already awarded. On July 29, 1997, Fravel filed a motion to reconsider, which the trial court denied on July 31, 1997. On August 7, 1997, Fravel filed an appeal.

On November 3, 1997, Fravel filed a motion for a new trial pursuant to CR 60.02(b), (c), (d), and (f), seeking a hearing on his request for additional credit on his Kentucky sentence. On December 5, 1997, the Commonwealth's Attorney filed a response to the CR 60.02 motion. On December 8, 1997, the trial court denied the CR 60.02 motion, and Fravel filed an appeal. The current action represents a consolidation of the two above-described appeals.

Fravel argues that he is entitled to credit on his ten-year sentence on the 1994 Kentucky conviction for the period that he spent incarcerated in Florida between June 7, 1994, and November 1, 1996. He contends that the July 11, 1997, letter from the Probation and Parole Officer contained inaccurate information that unjustly prejudiced his request for additional jail credit. Fravel submitted several documents to the trial court that he maintains demonstrate that he was held in jail in Florida solely because of the Kentucky detainer following his release on the 1990 Florida conviction.

The exact support for Fravel's claim to additional prison credit is somewhat ambiguous. First, he argues that the

final sentencing order of the Fayette Circuit Court states that his Kentucky sentence was to run consecutively to any other previous felony sentence. Therefore, he asserts that because the 1996 Florida conviction was rendered subsequent to the Kentucky conviction, the sentences for these two sentences should run concurrently with each other. Fravel also points out that the final judgment on the 1996 Florida conviction specifically states that that sentence would run concurrently with the Kentucky sentence. Unfortunately, Fravel's argument runs counter to Kentucky statutory law.

KRS 532.115 states:

The court in sentencing a person convicted of a felony, shall be authorized to run the sentence concurrent with any federal sentence received by that defendant for a federal crime and any sentence received by that defendant in another state for a felony offense. The time spent in federal custody and the time spent in custody in another state under the concurrent sentencing shall count as time spent in state custody; but the federal custody and custody in another state shall not include time spent on probation or parole or constraint incidental to release on bail. If the court does not specify that its sentence is to run concurrent with a specific federal sentence or sentence of another state, the sentence shall not run concurrent with any federal sentence or sentence of another state.

KRS 533.060(2) states:

When a person has been convicted of a felony and is committed to a correctional detention facility and released on parole or has been released by the court on probation, shock probation, or conditional discharge, and is convicted or enters a plea of guilty to a felony committed while on parole, probation, shock probation, or conditional discharge, the person shall not be eligible for probation, shock probation, or conditional

discharge and the period of confinement for that felony shall not run concurrently with any other sentence.

The final judgment of the Fayette Circuit Court does not specify that it would run concurrently with the Florida sentence, and therefore it must run consecutively to the Florida sentence under KRS 532.115. In addition, Fravel committed the felonies underlying the Kentucky sentence while he was on parole for the 1990 Florida felony conviction. Thus, under KRS 533.060(2), the Kentucky sentence "shall not run concurrently with any other sentence." This statute has been construed to encompass sentences involving convictions in Kentucky and another state. See Rosenberg v. Defew, Ky. App., 862 S.W.2d 334 (1993). The Fayette Circuit Court is not obligated to order the Kentucky sentence to run concurrently merely because the Florida court orders the Florida sentence to run concurrently with the Kentucky sentence. The Florida court gave Fravel credit on his 1996 Florida sentence for the period between June 1994 and November 1996, and it cannot control whether a Kentucky court will give a defendant credit on a Kentucky conviction and sentence.

The record does not demonstrate that Fravel remained in jail in Florida after June 1994 solely because of the Kentucky detainer. While several of the charges connected with the warrants initially filed upon Fravel's release in June 1994 were ultimately dismissed, the felony charges supporting the 1996 Florida conviction were pending throughout this period. The documents submitted by Fravel do not demonstrate that he remained in jail in Florida solely because of the Kentucky detainer.

In conclusion, Fravel has not established that he was entitled to any additional prison time on his Kentucky sentence for the period he was incarcerated in Florida. The trial court awarded Fravel one hundred and twenty-three (123) days for jail-time credit for the time he spent in the Kentucky jail prior to being sentenced in February 1994.¹ Moreover, Fravel already has received credit for the entire period he was incarcerated in Florida on the 1996 Florida conviction. Fravel has not shown why he would be entitled to double credit in both Kentucky and Florida for the same time period he was incarcerated in Florida. As a result, the trial court did not err in denying the motion for credit on time served and the CR 60.02 motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Fravel, Pro Se
Lexington, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler III
Attorney General

Joseph R. Johnson
Assistant Attorney General
Frankfort, Kentucky

¹It is questionable whether Fravel was entitled to receive presentence jail-time credit for this period because he was serving the sentence on the 1990 Florida conviction at the time. See Houston v. Commonwealth, Ky. App., 641 S.W.2d 42 (1982).