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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1996-CA-003264-MR

EMANUEL HOSKINS

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 96-CR-0050

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, JOHNSON, AND KNOPF, JUDGES.

JOHNSON, JUDGE: Emanuel Hoskins (Hoskins) appeals from the judgment and sentence on a plea of guilty entered on November 21, 1996, in the Laurel Circuit Court which convicted Hoskins of manslaughter in the second degree in violation of Kentucky Revised Statutes (KRS) 507.040, driving under the influence (second offense) in violation of KRS 189A.010, four counts of assault in the fourth degree in violation of KRS 508.030, and wanton endangerment in the first degree in violation of KRS 508.060. Hoskins argues that the sentence he received failed to

give him proper credit for the time he spent in custody prior to being sentenced. We affirm.

On the evening of December 9, 1995, Hoskins drove a car while intoxicated and the car collided with another car killing one passenger in the other car and injuring four others. Apparently, Hoskins was taken into custody that evening on felony charges.¹

On January 6, 1996, Hoskins claimed to have injured his arm when he fell from the top bunk in his jail cell. When a deputy took Hoskins to the hospital, he escaped, but he was captured shortly thereafter. Hoskins was indicted on February 16, 1996, on one count of escape in the second degree in violation of KRS 520.030.

On March 22, 1996, Hoskins was indicted on the following charges stemming from the December car accident: second degree manslaughter, driving under the influence (second offense), driving on a suspended license (first offense), no insurance, four counts of assault in the first degree, and wanton endangerment in the first degree.

On April 3, 1996, Hoskins filed a motion to enter a guilty plea on the escape charge and on April 19, the trial court sentenced Hoskins to prison for one year on the escape conviction. In accordance with the presentence investigation report, the trial court credited Hoskins with 105 days for time

¹The record does not disclose the details other than to state that Hoskins was rushed to the hospital.

served in jail. A document in the record, "Notice of Discharge," states that Hoskins began serving the sentence for escape on April 19. On August 30, 1996, after serving the minimum time, Hoskins was discharged on the escape sentence. However, Hoskins remained in jail pending trial on the manslaughter indictment.

On September 30, Hoskins filed a motion to enter a guilty plea on the charges arising out of the car accident. On November 21, 1996, Hoskins was sentenced to prison for eight years on the manslaughter conviction, six months on the driving under the influence conviction, twelve months on each of the four assault convictions and five years on the wanton endangerment conviction with all sentences to run concurrently.² The presentence investigation report stated that Hoskins had earned 78 days of credit for time served in jail. Hoskins filed a motion asking that he receive 239 days of credit³ because, he argued, according to KRS 532.120(3) he was entitled to credit for all time spent in custody on the manslaughter charge, including

²The driving on a suspended license charge and the driving with no insurance charge were dismissed. The four counts of assault in the first degree were amended down to four counts of assault in the fourth degree.

³Hoskins only appeals from the judgment on the manslaughter and related convictions. He does not appeal from the escape judgment. A review of the record indicates Hoskins was credited with 105 days of time served in jail prior to his sentencing on the escape charge. Using the "Notice of Discharge," we calculate that Hoskins actually served 134 days of his one-year sentence in prison. This brings the total amount of time Hoskins served on the escape conviction to 239 days. Hoskins does not dispute this and, in fact, he argues that these 239 days should be credited to his manslaughter sentence.

the time spent in jail on the escape sentence. The trial court overruled Hoskins' motion. This appeal followed.

Hoskins characterizes the issue on appeal as whether he is entitled to credit for all time spent in custody between his arrest on the manslaughter charge and the commencement of his sentence on that conviction. Hoskins argues that KRS 532.120(3) governs credit for time spent in custody before sentencing, while the Commonwealth counters that KRS 532.110 is the controlling statute. Hoskins also notes the case of Handley v. Commonwealth, Ky.App., 653 S.W.2d 165 (1983), which deals with KRS 533.060(3). KRS 532.120(3) states as follows:

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.

KRS 532.110(4) states as follows:

Notwithstanding any provision in this section to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, during an escape from imprisonment, or while he awaits imprisonment, the sentence imposed for that offense may be added to the portion of the term which remained unserved at the time of the commission of the offense. The sentence imposed upon any person convicted of an escape or attempted escape offense shall run consecutively with any other sentence which the defendant must serve.

KRS 533.060(3) states as follows:

When a person commits an offense while awaiting trial for another offense, and is subsequently convicted or enters a plea of guilty to the offense committed while awaiting trial, the sentence imposed for the offense committed while awaiting trial shall not run concurrently with confinement for the offense for which the person is awaiting trial.

We agree with Hoskins that since he served the entire escape sentence prior to being sentenced on the manslaughter conviction, there was no sentence on the escape to run consecutively or concurrently with the manslaughter sentence. For that reason, we do not believe KRS 532.110 is dispositive.

Handley, supra, relied upon by Hoskins, does not support his position. Handley was charged in the Franklin Circuit Court with five felonies, arrested and then released on bail. While on bail, he was charged in the Jefferson Circuit Court with a misdemeanor and remained in the Jefferson County jail until he was sentenced on that charge. On his subsequent return to the Franklin Circuit Court, Handley entered a guilty plea and was sentenced to a one-year term of imprisonment to run consecutively to the Jefferson Circuit Court term he was then serving. Handley sought credit against the Franklin Circuit Court sentence for time spent in the Jefferson Circuit Court jail and the trial court denied the credit. This Court in affirming the trial court relied on KRS 533.060(3) and KRS 532.120(3), and stated that "[c]redit for time spent in custody prior to the commencement of a sentence applies only where the custody was a

result of the charge that culminated in his sentence." Id. at 166.

KRS 532.120(3), which is relied upon by Hoskins, deals with credit for time spent in custody and the critical language of that statute concerns credit for "[t]ime spent in custody . . . as a result of the charge that culminated in the sentence. . . ." Hoskins served 239 days in jail for the felony conviction of escape. These 239 days were days spent "in custody . . . as a result of the charge that culminated in the sentence"—namely, the escape charge. These 239 days in custody were not spent as a result of the manslaughter conviction. Thus, KRS 532.060(3) does not apply to the manslaughter sentence, but rather only to the escape sentence.

In Martin v. Commonwealth, Ky.App., 957 S.W.2d 262 (1997), Martin escaped while home-incarcerated for nonsupport. Martin wanted credit for both the nonsupport sentence and the escape sentence for time spent in jail. This Court addressed the application of KRS 532.120(5)⁴ and determined that credit for

⁴KRS 532.120(5) states as follows:

If a person serving a sentence of imprisonment escapes from custody, the escape shall interrupt the sentence. The interruption shall continue until the person is returned to the institution from which he escaped or to an institution administered by the Department of Corrections. Time spent in actual custody prior to return under this subsection shall be credited against the sentence if custody rested solely on an arrest or surrender for the escape itself.

time served should be applied to either the escape sentence or the underlying sentence but not both sentences. See also Bailey v. Commonwealth, Ky.App., 598 S.W.2d 472 (1980).

It is obvious from these statutes and the cases cited herein that the Legislature intended to give a defendant credit for the time served that related to the charges for which he was serving the time and to require those who commit felonies while awaiting trial, to serve additional time for that crime and not to be allowed credit on the underlying felony charges. We hold that the 239 days Hoskins served on the escape conviction cannot be credited to the underlying manslaughter conviction. To allow Hoskins the credit he seeks would produce the absurd result that he would receive no additional punishment for the felony escape conviction.

For the foregoing reasons, we affirm the judgment of the Laurel Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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