

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002232-MR

DAVID MARSHALL

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 99-CR-00058

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, JOHNSON, AND McANULTY, JUDGES.

McANULTY, JUDGE: David Marshall (hereinafter appellant) appeals from a final judgment and sentence imposed pursuant to a guilty plea entered in the Marshall Circuit Court. On June 7, 1999, appellant entered a guilty plea to charges of possession of marijuana, KRS 218A.1422, and possession of drug paraphernalia, second or subsequent offense, KRS 218A.500. He was sentenced to twelve months' imprisonment for the possession of marijuana offense and one-and-a-half years for the possession of drug paraphernalia offense, to be served concurrently. The trial court held that KRS 533.060(3) required these sentences to be served consecutively with sentences imposed on appellant by the

McCracken Circuit Court. That statute provides in subsection (3):

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.

Appellant committed the offense in this case on February 23, 1999, after having been arrested on multiple charges in McCracken County on October 25, 1998. He was indicted for those offenses on November 20, 1998. Appellant subsequently pled guilty to amended charges in that case on June 4, 1999, and was sentenced to a total of eight years' imprisonment.

Appellant now argues that the trial court was not required to run his sentence in the Marshall Circuit Court case consecutively with the sentence from the McCracken Circuit Court because KRS 532.110(4) gives the sentencing court discretion in this situation. We disagree. KRS 532.110(4) states in pertinent part:

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. . . .
(Emphasis added.)

Appellant argues that KRS 532.110(4) applies in the case at bar, and that the term "may" in this statute gives the court discretion in determining how the sentences will be run.

We do not agree that KRS 532.110(4) applies in this case. Appellant was not awaiting imprisonment at the time he committed the offenses in this case since he had not been tried nor had he pled guilty to the offenses in McCracken County. However, once appellant was arrested and indicted for the offenses in McCracken County, he was considered to be "awaiting trial" on those charges under 533.060(3). Moore v. Commonwealth, Ky., 990 S.W.2d 618 (1999). Therefore, we do not find any conflict between the statutes in this case which would require us to harmonize them as appellant desires. We believe that KRS 533.060(3) is the controlling statute in these circumstances. We conclude that the Marshall Circuit Court correctly ordered appellant's sentence to run consecutively to his sentence received from the McCracken Circuit Court. Therefore, we affirm the judgment of the Marshall Circuit Court.

ALL CONCUR.

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