

RENDERED: OCTOBER 12, 2001; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000492-MR

SCOTT YOUNG

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT  
HONORABLE CHARLES W. BOTELEER, JR., JUDGE  
ACTION NO. 98-CR-00201

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING  
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BEFORE: DYCHE, JOHNSON AND McANULTY, JUDGES.

JOHNSON, JUDGE: Scott Young has appealed an order of the Hopkins Circuit Court entered on February 8, 2000, which denied his motion for additional jail time credit. Having concluded that the record before the trial court was inadequate to allow for a proper review of Young's motion, we vacate the trial court's order and remand for further proceedings.

A review of the record reveals that Young, who is currently incarcerated in the Kentucky State Penitentiary, has been in and out of custody frequently within the last 10 years on

an assortment of charges. Currently, he is serving a two-year sentence imposed for a conviction for promoting contraband in the first degree. In his motion for additional jail time credit, Young asserted that the trial court erred when it granted him only three days of jail time credit toward his current sentence. He contends that he is actually entitled to 99 days of jail time credit.

While Young styled his motion as a "motion pursuant to KRS 532.120(3) requesting court to enter an order granting movant additional jail time credit" and failed to file his motion pursuant to any particular court rule, we agree with the Commonwealth that Young's motion was the functional equivalent of a motion pursuant to CR<sup>1</sup> 60.02(a).<sup>2</sup> The applicable standard of review for motions pursuant to CR 60.02 limits this Court to a review of the trial court's exercise of discretion in ruling on the motion to set aside the original judgment.<sup>3</sup>

Young was indicted for promoting contraband in the first degree on September 30, 1998. On January 5, 1999, he entered a plea of guilty to the charge; and on January 19, 1999, he was sentenced to two years' imprisonment, probated for five years. The record reveals that after Young was indicted on

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<sup>1</sup>Kentucky Rules of Civil Procedure.

<sup>2</sup>See Duncan v. Commonwealth, Ky.App., 614 S.W.2d 701 (1981) (construing a motion for additional jail time credits as a CR 60.02 motion).

<sup>3</sup>Bethlehem Minerals Co. v. Church & Mullins Corp., Ky., 887 S.W.2d 327, 329 (1994).

September 30, 1998, he was arrested and incarcerated in the Hopkins County Jail from October 12, 1998, to January 19, 1999.<sup>4</sup> While this period of incarceration might be a result of the indictment of September 30, 1998, it appears, from the record, that there were two other convictions for which Young could have been incarcerated.<sup>5</sup>

In any event, Young violated the terms of his probation in the case sub judice by using alcohol and his probation was revoked. In an order, entered on March 31, 1999, Young's two-year sentence was reinstated and he was given three days of jail time credit. On January 31, 2000, Young filed a pro se motion for jail time credit, which claimed he was entitled to 92 additional days in jail time credit.<sup>6</sup> The Hopkins Circuit Court denied Young's motion on February 8, 2000. This appeal followed.

In its brief, the Commonwealth argues that Young is precluded from pursuing his claim for additional jail time credit

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<sup>4</sup>Apparently, this time period constitutes the 99-day total Young arrived at in his motion for additional jail time credit.

<sup>5</sup>Apparently, on June 18, 1998, Young was sentenced by the Hopkins Circuit Court (98-F-00225) to 360 days of incarceration for his conviction for unlawful transaction with a minor in the third degree; 270 days of the sentence were conditionally discharged. Apparently, on July 16, 1998, Young was sentenced by the Hopkins Circuit Court (98-F-00268) to 90 days of incarceration for promoting contraband in the second degree; 60 days of the sentence were conditionally discharged and the remaining 30 days were ordered to be served concurrently with the sentence of June 18. In both instances, Young was granted a work release so long as he was employed.

<sup>6</sup>Young claimed a total of 99 days of credit in his motion and he claimed he had been allowed seven days credit. However, the order had allowed him three days, so the difference would appear to be 96 days.

since he did not file his motion within one-year of the date of the judgment as required by CR 60.02 <sup>7</sup> and Duncan, supra. While it is true that Young filed his motion over one year from the entry of final judgment in his case, Young's CR 60.02 motion did not relate to the final judgment. The final judgment of January 27, 1999, fixed Young's sentence at two years and probated the sentence for a period of five years. It did not address the issue of jail time credit. Rather, it was the order of March 31, 1999, which revoked Young's probation that also gave him three days of jail time credit. Young's CR 60.02 motion, which alleges a mistake in the determination of jail time credit, clearly relates to the March 1999, order and not the January 1999, order. Since Young's motion was filed on January 31, 2000, it was timely filed.

The calculation of terms of imprisonment is governed by KRS<sup>8</sup> 532.120(3), which provides, in relevant 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." Conversely, credit is not given for time spent in custody as a result of an unrelated charge.<sup>9</sup>

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<sup>7</sup>CR 60.02 states that "[t]he motion shall be made within a reasonable time, and on grounds (a), (b) and (c) not more than one year after the judgment, order, or proceeding was entered or taken."

<sup>8</sup>Kentucky Revised Statutes.

<sup>9</sup>KRS 532.120(3); Prewitt v. Wilkinson, Ky.App., 843 S.W.2d (continued...)

The Commonwealth has generally asserted that Young "had other problems with the law at the time of his indictment," and that Young "clearly could have been serving time for other charges while he was being held to answer for this indictment as well." However, a careful review of the record does not reveal whether Young was serving time in custody for the charge to which this appeal relates or whether he was serving time in custody for one of the unrelated charges pending against him at the time.<sup>10</sup> Additionally, the order of March 31, 1999, does not state a factual or legal basis for its award of three days of jail time credit. Without a determination by the trial court of whether Young's time spent in custody from October 12, 1998, to January 19, 1999, related to his current sentence or to another sentence, we are unable to conduct a proper review of the trial court's order.

Accordingly, the order of the Hopkins Circuit Court must be vacated and this matter must be remanded for a hearing and factual findings. Specifically, upon remand, the Hopkins Circuit Court must determine whether the time that Young spent in custody during the time period from October 12, 1998, to January 19, 1999, related to the current conviction or some prior,

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<sup>9</sup>(...continued)  
335, 336 (1992); Lemon v. Corrections Cabinet, Ky.App., 712 S.W.2d 370, 371 (1986); Handley v. Commonwealth, Ky.App., 653 S.W.2d 165, 166 (1983).

<sup>10</sup>See n.5, supra, (discussing the other charges concerning Young at the time of his September 30, 1999, indictment for promoting contraband in the first degree).

unrelated charge or conviction. If the time spent in custody during that time related to his current, two-year sentence for promoting contraband in the first degree, Young's motion should be granted. If the trial court finds that this time in custody related to some other charge or conviction, then Young would not be entitled to any additional jail time credit.

ALL CONCUR.

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