

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000677-MR

DARNELL HOPEWELL

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 01-CI-01568

TAYLOR VERTNER, COMMISSIONER
DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: GUIDUGLI, HUDDLESTON AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE. Darnell Hopewell has appealed from the March 25, 2002, order of the Franklin Circuit Court dismissing his Petition for Writ of Mandamus wherein he sought to have the Department of Corrections subtract the time he served prior to his parole release date from three prison sentences upon the revocation of his parole. Finding no error, we affirm.

In March 1982, the Boone Circuit Court sentenced Hopewell to fifteen years for robbery and to twenty years for kidnaping, ordering the sentences to be served consecutively with each other. Later that year, the Madison Circuit Court sentenced

Hopewell to another ten-year term for another robbery conviction that was to be served consecutively with the Boone Circuit Court sentences. In sum, Hopewell was sentenced to forty-five years of imprisonment.¹ The Supreme Court of Kentucky affirmed his direct appeal of the Boone Circuit Court convictions² and his attempts to obtain post-conviction relief before that court and before the Madison Circuit Court were unsuccessful.³

On March 31, 1997, the Parole Board granted Hopewell parole and he was released. At that time, the minimum expiration date for his sentences was January 26, 2016. Due to a parole violation, he was returned to prison on August 8, 1997. The minimum expiration date was then extended to May 11, 2016, to account for the time that he was on parole. Hopewell filed a Petition for Writ of Mandamus with the Franklin Circuit Court on November 19, 2001, requesting that the circuit court require the Department of Corrections to subtract his previously served fifteen and one-half years from each of the three previously imposed sentences. He cited Lemon v. Corrections Cabinet, Ky. App., 712 S.W.2d 370 (1986), to support his position. Additionally, he requested that the sentences be served concurrently. The Department of Corrections responded, arguing that Hopewell's reliance on Lemon was misplaced and that he was

¹Hopewell has also been convicted of other felony charges in Bourbon and Scott Circuit Courts. However, the sentences imposed do not affect the length of his prison term.

²Hopewell v. Commonwealth, Ky., 641 S.W.2d 744 (1982).

³This Court affirmed the Boone Circuit Court's denial of his RCr 11.42 motion in Hopewell v. Commonwealth, Ky.App., 687 S.W.2d 153 (1985). His other post-conviction appeals were affirmed in unpublished opinions.

merely attempting to avoid the consecutive running of the sentences. Agreeing with the Department of Corrections, the circuit court dismissed the Petition for Writ of Mandamus. This appeal followed.

On appeal, Hopewell continues to argue that the Department of Corrections should subtract the time served prior to his parole from each of the three sentences he is again serving due to his parole violation. Alternatively, he argues that the amount should be subtracted from the forty-five-year total. Likewise, the Department of Corrections continues to argue that Hopewell's reliance upon Lemon is misplaced and that the circuit court properly dismissed his petition.

As in this case, the Lemon case dealt with an appeal from the denial of a Petition for Writ of Mandamus. In Lemon, the appellant received two four-year sentences, to be served concurrently, one from Jefferson Circuit Court and the second one from Hardin Circuit Court. For the second sentence, the Hardin Circuit Court granted the appellant credit for the time he had already served for the Jefferson Circuit Court conviction. However, the Corrections Cabinet did not credit the appellant for the time he served prior to being released on shock probation. Therefore, this Court reversed the circuit court's denial of the petition and directed the Corrections Cabinet to recompute his sentence.

In this case, we have thoroughly reviewed the record, which contains a copy of Hopewell's resident record card. This document reveals that he was sentenced to serve a total of forty-five years. Prior to his release on parole, his minimum release

date was calculated to be January 26, 2016. He was paroled on March 31, 1997, and recommitted on August 8, 1997, for a parole violation. After being credited for twenty-two days spent in jail pending his parole revocation, his new minimum expiration date became May 11, 2016. It is apparent that Hopewell is not being required to re-serve the fifteen and one-half years he served prior to being paroled. In fact, the only time added to his minimum expiration date is the time that elapsed while he was on parole, which cannot count toward his sentence. Therefore, the Department of Corrections is correct in its assertion that the holding in Lemon is inapplicable. In that case, the appellant did not get the credit to which he was entitled. Here, Hopewell is clearly attempting to circumvent the consecutive nature of his sentences.

The order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

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