

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-001949-MR

VINCENT CAISE

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE PHILLIP J. SHEPHERD, JUDGE  
ACTION NO. 07-CI-01946

JOHN REES

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE AND LAMBERT, JUDGES; HARRIS,<sup>1</sup> SENIOR JUDGE.

HARRIS, SENIOR JUDGE: Vincent Caise appeals from an order dismissing his petition for declaratory judgment. Caise argues that his term of imprisonment has been improperly calculated. We affirm.

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<sup>1</sup> Senior Judge William R. Harris sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Caise was convicted of various felony offenses in Fayette Circuit Court on February 1, 1980, and was sentenced to twenty-five years of imprisonment. On October 29, 1985, Caise was released on parole. During his parole, Caise was charged and convicted of burglary, robbery, rape, sodomy, and being a persistent felony offender. In its judgment entered on October 7, 1987, the Fayette Circuit Court ordered that “the sentences imposed shall run concurrently with each other and the total sentence of forty (40) years shall run consecutively with any other previous felony sentence the defendant must serve.” The Department of Corrections determined that the total length of Caise’s sentence was sixty-five years.

Caise disagreed with the sentence calculation and after exhausting administrative remedies, he filed a petition for declaratory judgment in Franklin Circuit Court. The court dismissed the petition. This appeal followed.

Although Caise purports to characterize his argument in terms of sentence calculation rather than concurrent or consecutive sentencing, the essence of his argument is that the sentences imposed in 1980 and 1987 should run concurrently under KRS 532.110(3) as it existed at the time of his 1987 sentencing. At that time, KRS 532.110(3) provided:

When a defendant is sentenced to imprisonment for a crime committed while on parole in this state such term of imprisonment and any period of reimprisonment that the board of parole may require the defendant to serve

upon the revocation of his parole shall run concurrently,  
unless the court orders them to run consecutively.

The Fayette Circuit Court specifically ordered Caise's forty-year sentence to run consecutively with any previous felony sentences. Moreover, KRS 533.060(2) specifically addresses felonies committed while on parole and states:

When a person has been convicted of a felony and is committed to a correctional detention facility and released on parole . . . and is convicted or enters a plea of guilty to a felony committed while on parole . . . the period of confinement for that felony shall not run concurrently with any other sentence.

Even if the Fayette Circuit Court had not ordered the sentences to run consecutively, the language in KRS 533.060(2) is mandatory and controls over KRS 532.110(2). *Riley v. Parke*, 740 S.W.2d 934, 935 (Ky. 1987). The reasoning of *Riley* is equally applicable to KRS 532.110(3) as it existed at the time of Caise's sentence. The trial court did not err by dismissing the petition for declaratory judgment.

For the foregoing reasons, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Vincent Caise, *pro se*  
Burgin, Kentucky

BRIEF FOR APPELLEE:

Angela E. Cordery  
Frankfort, Kentucky