

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001053-MR

JESSIE SEBASTIAN

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE C.A. WOODALL, III¹
ACTION NO. 09-CR-00022

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, MAZE AND TAYLOR, JUDGES.

CLAYTON, JUDGE: Jessie Sebastian, pro se, appeals from the Lyon Circuit Court order partially granting his motion for additional jail time credit. For the reasons stated below, we affirm.

On April 6, 2009, the Lyon County grand jury indicted Sebastian for escape from a detention facility and being a persistent felony offender (PFO). The

¹ Circuit Judge C.A. Woodall, III, signed the order entered May 19, 2011.

arrest warrant stated that he had escaped from the West Kentucky Correctional Farm Complex.

Sebastian, on November 5, 2010, filed a motion to enter a guilty plea and waived the right to appeal. The trial court entered a judgment, pursuant to the Commonwealth's recommendation, which sentenced him to five years and was enhanced to twenty years based on the PFO count. Further, the sentence was to run concurrently with Caldwell Circuit Court's indictments, 09-CR-63 and 10-CR-20, but was to run consecutively to any previous sentence that Sebastian was serving and provided no days of jail-time credit.

Thereafter, on May 1, 2011, Sebastian moved for jail-time credit of 791 days for the time spent in the Lamar County Detention Center in Georgia (September 8, 2008 through July 21, 2009) and time spent in the custody of the Kentucky Department of Corrections until his sentence on November 5, 2010. The trial court, on May 19, 2011, granted Sebastian's motion in part. Rather than giving him 791 days of credit, it gave him 792 days of credit. And it also computed the jail-time credit differently. In its computation of the jail-time credit, the trial court attributed 320 of the 792 days to the sentence for escape and the remaining 472 days it credited to Sebastian's original, underlying sentence. The 320 days was the amount of days that Sebastian served in Georgia on the escape before his return to the Kentucky Department of Corrections.

Sebastian appealed from this order on May 27, 2011. He argues that the trial court erred when it did not credit all 792 days of jail credit to the escape

charge. He maintains that the trial court misinterpreted *Bailey v. Commonwealth*, 598 S.W.2d 472 (Ky. App. 1980). The Commonwealth responds that Sebastian's contentions are meritless and that the trial court's interpretation was correct.

Statutory guidance is found in Kentucky Revised Statutes (KRS)

532.120(5):

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.

To apply the statute to the case herein, the trial court found that the 320 days served in Georgia related to jail-time credit for the escape count and that the 472 days served in the custody of the Kentucky Department of Corrections related to the underlying sentence, which was being served at the time of his escape. To explain, within the purview of the plain meaning of the statute, the time in Georgia was served specifically on the escape charge. Once Sebastian, however, returned to the custody of Kentucky Corrections, the time served was for the original sentence as per the statutory language – “[t]he 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.” Therefore, the trial court correctly applied the statutory requisites regarding jail-time credit for an escape.

Moreover, this analysis complies with *Bailey*, contrary to Sebastian's assertions. Although the situation in *Bailey* involved a different permutation of the issue, its holding supports the reasoning of the trial court herein. In *Bailey*, the jail credit time of seventy-two days was credited to the sentence for the escape charge, even though Bailey wanted to apply it to his original, underlying sentence instead of the escape time. The Court did not allow the credit for the underlying sentence but only for the escape sentence.

Sebastian could only receive credit on the escape charge when he was specifically serving time for it, and his later return, prior to sentencing for the escape, could only provide jail-time credit for the underlying sentence.

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

ALL CONCUR.

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