

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-001747-MR

GLENN PHILLIPS

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS WINGATE, JUDGE  
ACTION NO. 13-CI-00930

ROBERT F. BELEN; SHARON PERKINS; AND  
LADONNA THOMPSON

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: COMBS, THOMPSON AND STUMBO, JUDGES.

STUMBO, JUDGE: Glenn Phillips, *pro se*, appeals from an Order of the Franklin Circuit Court dismissing his Petition for Declaration of Rights. Phillips' Petition challenged a sentence calculation administered by the Kentucky Department of Corrections after Phillips was transferred to Kentucky by the California Department of Corrections. Phillips argues that the Franklin Circuit Court erred

when it determined that he was not entitled to serve his Kentucky sentence concurrently with the California sentence. We find no error, and Affirm the Order on appeal.

In March, 2009, and while incarcerated in California on a felony conviction, Phillips was served by the Commonwealth of Kentucky with a detainer for parole violation. The detainer placed Phillips on notice that he was wanted by the Kentucky Department of Corrections. The notice provided a list of alternatives, but the alternative of return to Kentucky for concurrent service was not checked.

On August 31, 2009, Phillips contacted the California prison authorities requesting a transfer to Kentucky and a concurrent sentence. According to the record, the California authorities stated to Phillips that an unnamed "representative for Kentucky" stated via telephone that Phillips would receive concurrent sentencing for his California and Kentucky prison terms.

Phillips was later transferred to Kentucky where he received a sentence to be served consecutively rather than concurrently with the California sentence. He then filed a petition with the Kentucky Department of Corrections seeking administrative review, where he argued that an unnamed Kentucky official advised him while he was incarcerated in California that the Kentucky sentence would run concurrently with the California sentence. On June 4, 2014, the Kentucky Department of Corrections responded that Phillips could not be granted credit for the time served in California because he was on parole for a Kentucky

conviction at the time he committed the California offense. After Phillips unsuccessfully appealed the decision, he filed the instant action in Franklin Circuit Court seeking a Declaration of Rights. Upon taking proof, the Court determined that Phillips must be denied credit for the time served in California because the California offense was committed while he was on parole from the Kentucky offense. In support of this determination, the Court relied on KRS 533.060(2) and *Brewer v. Commonwealth*, 922 S.W.2d 380 (Ky. 1996), which require consecutive sentencing under these circumstances. This appeal followed.

The sole issue for our consideration is whether the Franklin Circuit Court erred in its application of KRS 533.060(2) and *Brewer* to the facts at bar.

We conclude that it did not. KRS 533.060(2) states:

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

In *Brewer*, a panel of this Court examined an apparent conflict between KRS 533.060(2) and KRS 533.040(3), the latter of which addresses the calculation of periods of probation and conditional discharge. In examining the apparent conflict, the Kentucky Supreme Court, in adopting the opinion of a previous panel of this Court *in toto*, held that,

The statute [KRS 533.060(2)] clearly and unambiguously requires that the appellant's second sentence, the Barren County sentence, not run concurrently with his first sentence, the Warren County sentence. *See Commonwealth v. Hunt*, Ky. App., 619 S.W.2d 733 (1981).

The law of statutory construction mandates that KRS 533.060 control. The law of statutory construction was summarized in *Hunt, supra, citing Brown v. Hoblitzell*, Ky., 307 S.W.2d 739, 744 (1956), stating as follows:

In enacting laws, the Legislature is presumed to take cognizance of the existing statutes and the condition of the law so that when the statute under consideration is ambiguous, the new enactment is to be construed in connection and in harmony with the existing laws as a part of a general and uniform system of jurisprudence. *Button v. Hikes*, 296 Ky. 163, 176 S.W.2d 112, 150 A.L.R. 779; *Reynolds Metal Co. v. Glass*, 302 Ky. 622, 195 S.W.2d 280. Apparent conflicts or repugnancies between statutes on the same general subject enacted at different times should be reconciled in the light of the existing statutes and Constitution. *Cawood v. Coleman*, 294 Ky. 858, 172 S.W.2d 548; *Burbank v. Sinclair Prairie Oil Co.*, 304 Ky. 833, 202 S.W.2d 420. If the conflict cannot be reconciled, the latter [later] statute controls. *Butcher v. Adams*, 310 Ky. 205, 220 S.W.2d 398.

*Hunt*, 619 S.W.2d at 734. The two statutes clearly contradict if read in conjunction and according to the appellant's position. Since KRS 533.060 was enacted in 1976, and KRS 533.040 was enacted in 1974, the former controls.

*Brewer* at 381-382.

According to *Brewer*, then, KRS 533.060 controls as the latter-enacted statute. Because Phillips committed the California felony offense while on parole for the Kentucky felony offense, KRS 533.060(2) requires the respective penalties to be served consecutively. The Franklin Circuit Court properly so concluded, and we find no error. Phillips' reliance on the purported statement of an unnamed and alleged Kentucky official while in California does not affect the application of KRS 533.060(2), and no discovery on this issue was required prior to adjudication of Phillips' Petition.

For the foregoing reasons, we Affirm the Order of the Franklin Circuit Court dismissing Phillips' Petition for Declaration of Rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

Glenn Phillips, *pro se*  
Green River Correctional Complex  
Central City, Kentucky

BRIEF FOR APPELLEE:

John Marcus Jones  
Kentucky Department of Corrections  
Frankfort, Kentucky