

RENDERED: AUGUST 30, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2018-CA-000867-MR

TAMMY LAMB

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT  
HONORABLE JAMES T. JAMESON, JUDGE  
ACTION NO. 17-CR-00144

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING IN PART AND VACATING AND REMANDING IN PART

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BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

COMBS, JUDGE: Tammy Lamb entered a plea of guilty for possession of a controlled substance in the first degree. She now appeals from a judgment of the Calloway Circuit Court sentencing her to eighteen-months' imprisonment, probated for five years with 120 days to serve. After our review, we affirm in part and vacate and remand in part.

The basic facts are not in dispute. Under Lamb's plea agreement, the Commonwealth recommended eighteen-months' imprisonment for the offense of possession of a controlled substance (methamphetamine) -- with various other offenses to run concurrently. Lamb then filed a motion asking the trial court "to sentence her to probation **or** probation with alternative sentencing **upon whatever** terms and conditions the Court may deem appropriate." Record at 113. (Emphases added).

The trial court sentenced Lamb to eighteen-months' imprisonment, probated for five years, with an alternative sentence of 120 days in jail.<sup>1</sup> The trial court also wrote "[n]o credit for time served" on the judgment. Lamb did not object contemporaneously. Instead, she filed this appeal in which she raises two issues. First, she argues that the trial court erred by denying her credit for time served. Second, she contends that the alternative sentence was improper.

We may review unpreserved sentencing issues since "an appellate court is not bound to affirm an illegal sentence just because the issue of the illegality was not presented to the trial court." *Jones v. Commonwealth*, 382 S.W.3d 22, 27 (Ky. 2011). Sentencing issues include decisions that are "contrary to statute or . . . made without full consideration of statutory sentencing options."

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<sup>1</sup> The trial court **orally** ordered Lamb to serve 180 days of incarceration. However, "[w]hen there is a conflict between a court's oral statements and the written judgment, the written judgment controls." *Machniak v. Commonwealth*, 351 S.W.3d 648, 652 (Ky. 2011).

*Webster v. Commonwealth*, 438 S.W.3d 321, 326 (Ky. 2014). In the case before us, the claim that Lamb was improperly denied jail credit is undoubtedly a sentencing issue, and the Commonwealth addresses the alleged impropriety of the alternative sentence on the merits. Thus, we are satisfied that a sentencing issue has been raised.

“A defendant is entitled to have his prison sentence reduced by the amount of time he spent in custody before sentencing related to the crime for which he has been sentenced.” *Bard v. Commonwealth*, 359 S.W.3d 1, 4 (Ky. 2011). *See also* KRS<sup>2</sup> 532.120(3). The trial court’s handwritten notation “[n]o credit for time served” is contrary to that principle. According to an order that the trial court issued while this appeal was being briefed, the “no credit” language was intended to apply only to the 120-day alternative sentence. In light of this ambiguity, we are compelled to vacate the judgment and remand the matter in order for the trial court to issue an amended judgment clarifying the “no credit for time served,” bearing in mind Lamb’s entitlement to credit under *Bard* and KRS 532.120.

We now address Lamb’s argument that the trial court erred by granting **her motion** for an alternative sentence. She cites the commentary to KRS 533.010, which only generally **encourages** trial courts to utilize alternative

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<sup>2</sup> Kentucky Revised Statutes.

sentencing options—which the trial court did here. Moreover, KRS 533.010(6) expressly permits a sentencing court to “order probation with the defendant to serve one (1) of the following alternative sentences: . . . (c) To jail for a period not to exceed twelve (12) months . . . .” Thus, Lamb’s alternative sentence was expressly authorized by the plain language of the statute.

We note that Lamb requested an alternative sentence “upon whatever terms and conditions the Court may deem appropriate.” She now seeks appellate relief from a lawful act which she herself urged the trial court to take. Lamb also challenges the imposition of 120 days to serve as a condition of her probation. However, she cites to no authority which entitles her to relief on that point. KRS 533.010(1) specifically empowers a trial court to impose the very kind of alternative sentence at issue in this case. Therefore, Lamb is not entitled to relief on this issue.

To recapitulate, we AFFIRM in part and VACATE and REMAND in part the judgment of the Calloway Circuit Court.

ALL CONCUR.

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