

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000379-MR

KEVIN MADISON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 00-CR-001124

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** * * * *

BEFORE: VANMETER, JUDGE; EMBERTON AND KNOPF, SENIOR JUDGES.¹

VANMETER, JUDGE: Kevin Madison appeals *pro se* from an order entered by the Jefferson Circuit Court denying his motion seeking credit against his sentence for time spent in home incarceration prior to sentencing. We affirm.

In May 2000, Madison was indicted on multiple criminal charges. While awaiting trial and sentencing, he spent 99 days in the Jefferson County Corrections

¹ Senior Judges Thomas D. Emberton and William L. Knopf, sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Center, as well as more than 300 days in home incarceration. Madison eventually pled guilty to the charges against him, and he was sentenced to a total of ten years' imprisonment with credit for time spent in custody prior to sentencing. In January 2002, the trial court denied Madison's motion seeking credit for the time he spent in home incarceration prior to sentencing. No appeal was taken. Four years later, Madison filed the underlying *pro se* motion seeking credit for time spent in home incarceration prior to sentencing. The court denied the motion and this appeal followed.

KRS 532.210 provides that a nonviolent offender who has been sentenced to imprisonment in a county jail may be permitted to spend up to six months of that sentence in home incarceration, which then “shall be credited against the [defendant's] maximum term of imprisonment[.]” Similarly, KRS 532.120(3) provides in part that

[t]ime spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the court imposing sentence toward service of the maximum term of imprisonment.

However, KRS 520.010 defines “custody” as excluding “supervision of probation or parole or constraint incidental to release on bail.” (Emphasis added.)

Here, the additional days for which Madison seeks credit were days which he spent in home incarceration as a condition of his release on bail prior to the date of his sentencing as authorized by KRS 431.517. Those days clearly did not constitute “custody” for which he was entitled to credit for time served. As noted in *Cooper v. Commonwealth*, 902 S.W.2d 833, 836 (Ky.App. 1995),

[r]elease on bond is indeed a privilege granted to an arrestee allowing the court broad discretion to impose conditions

sufficient to guarantee his appearance later for trial. The alternative to release on bond, regardless of how stringent, is the ultimately restrictive confinement in the county jail prior to trial. Time served in the county jail must by statute be credited later against a sentence upon conviction and sentencing for the same crime. K.R.S. 532.120(2). Time released on bond, regardless of the restrictive conditions imposed, simply is not the same as jail time and is specifically excluded by statutory definition as a substitute for jail time. K.R.S. 520.010(2).

In short, as stated in *Buford v. Commonwealth*, 58 S.W.3d 490, 491 (Ky.App. 2001), “jail-time credit is not allowed for time spent in home incarceration where it is ordered as a form of pretrial release.” It follows that the trial court did not err by denying Madison's motion for credit for time spent in home incarceration prior to his sentencing.

The court's order is affirmed.

ALL CONCUR.

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