

Bruce Lamont BAILEY v. A. L. LOCKHART, Director,
Arkansas Department of Correction

90-85

791 S.W.2d 372

Supreme Court of Arkansas
Opinion delivered July 2, 1990

PARDON & PAROLE — CREDIT FOR TIME SERVED ON UNRELATED OFFENSE. — Appellant was convicted of kidnapping and rape and sentenced to two, concurrent fifty-year terms; fifteen days later appellant was convicted of robbery and sentenced to a ten-year term; a year later, appellant's convictions for kidnapping and rape were reversed on appeal, but facing retrial, appellant pled guilty to the charges and was resentenced to concurrent two-year terms, to run concurrently with the existing robbery term. *Held*: Appellant was not entitled to credit for time served on an unrelated charge; when appellant was resentenced he was given credit for forty-two days, presumably including the fifteen days he served solely for the

² Ark. Code Ann. § 5-3-403 (1987) provides that a person is an accomplice of another person in the commission of an offense if, with the purpose of promoting or facilitating the commission of an offense, he:

- (1) Solicits, advises, encourages, or coerces the other person to commit it; or
- (2) Aids, agrees to aid, or attempts to aid the other person in planning or committing it; or
- (3) Having a legal duty to prevent the commission of the offense, fails to make proper effort to do so.

kidnapping and rape charge, but he was not entitled to credit for his remaining time in prison since he was also serving a concurrent sentence for robbery.

Appeal from Jefferson Circuit Court; *Fred D. Davis II*, Judge; affirmed.

Appellant, pro se.

Steve Clark, Att'y Gen., by: *John D. Harris*, for appellee.

OTIS H. TURNER, Justice. The appellant sought mandamus to require credit for time served earlier in the Department of Correction against a sentence he is presently serving. This appeal is from a denial of the appellant's petition. We find that the appellant's sentences and credits for time served have been correctly calculated, and we affirm.

On October 10, 1984, the appellant was convicted of kidnapping and rape and sentenced to two fifty-year terms, to run concurrently.

On October 25, 1984, he was convicted of robbery and sentenced to a term of ten years.

The appellant's kidnapping and rape convictions were reversed on appeal on October 14, 1985. Facing a retrial, the appellant, on November 5, 1985, pled guilty to the kidnapping and rape charges and was resentenced on that date to concurrent two-year terms, to run concurrently with the existing robbery term.

[1] If the appellant had been incarcerated only for the kidnapping and rape charges from October 10, 1984, until the reversal on October 14, 1985, the appellant would be entitled to a credit for the time served. However, from October 25, 1984, he was also serving a concurrent sentence for robbery and is therefore not entitled to credit while serving time on an unrelated charge. *Humphrey v. State*, 300 Ark. 383, 779 S.W.2d 53 (1989); *McGirt v. State*, 289 Ark. 7, 708 S.W.2d 620 (1986).

There is a fifteen-day hiatus between the original sentences for kidnapping and rape, which were imposed on October 10, 1984, and his conviction for robbery on October 25, 1984. It is not clear from the record exactly how this was handled. However, the

record clearly reflects that upon resentencing on the kidnapping and rape charges, the appellant was given credit for forty-two additional days against his sentence, which is presumed to include the fifteen days between October 10, 1984, and October 25, 1984.

Affirmed.
