

Summary of SC93366, *Andrew Farish v. Missouri Department of Corrections*

Appeal from the Cole County circuit court, Judge Jon Edward Beetem

Submitted on briefs October 2, 2013; opinion issued December 24, 2013

Attorneys: Farish represented himself. The state was represented by Michael Spillane of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man who spent time in Kansas custody for a Kansas criminal charge appeals the judgment denying him credit for a portion of time he spent in Kansas toward his Missouri sentence for Missouri criminal charges. In a unanimous decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the circuit court's judgment. The man is not entitled to the credits he seeks. Time he spent in Kansas after Missouri issued an arrest warrant because his time in Kansas custody did not originate as a result of Missouri action, continued as a result of the Kansas charge and, therefore, was not "compelled exclusively" by the Missouri action. Further, time he spent serving his Kansas sentence is not "related to" the offense on which he seeks credit because he would have been in prison in Kansas regardless of his Missouri offense, and the sentencing court lacked authority to award credit not authorized by state law.

Facts: Andrew Farish committed robbery in February 2008 in Wyandotte County, Kansas; four days later, he committed first-degree robbery and armed criminal action in Jackson County, Missouri. He spent the next 10 months in jail in the custody of Kansas and began serving his sentence in the Kansas department of corrections in December 2008. In April 2009, while still serving his Kansas sentence, Farish was transferred to the Jackson County jail, where he spent the next 11 months awaiting disposition of the Missouri charges. In March 2010, Farish pleaded guilty, and the court sentenced him to prison terms of 10 years for the robbery charge and eight years for the armed criminal action charge. The court suspended the robbery sentence, placing him on probation for five years, and ordered his armed criminal action sentence to run concurrently (at the same time) with the sentence imposed in Kansas and all other time served. Ten days later, Farish returned to Kansas custody, where he spent the next five months in prison before his August 2010 return to Missouri custody in anticipation of his release from his Kansas sentence. He was paroled from his Kansas sentence later that month and remained in the Jackson County jail until October 2010, when the Missouri corrections department took custody of him. The Missouri department began Farish's eight-year sentence on October 20, 2010, and granted him 406 days of jail time credit for April 2009 to March 2010, when he was held in Jackson County awaiting disposition of his Missouri charges, and August to October 2010, spanning his transfer from Kansas in anticipation of his parole to his entry into the Missouri corrections department. Farish then filed suit, seeking a declaratory judgment that he was entitled to additional jail time credit for time he spent in Kansas awaiting disposition of the Kansas charge and time he spent serving his Kansas sentence. The circuit court granted the Missouri corrections department's motion for summary judgment (judgment on the pleadings). Farish appeals.

AFFIRMED.

Court en banc holds: Farish is not entitled to the credits he seeks. Under section 558.031.1, RSMo, a prisoner is entitled to jail time credit against his sentence for all time in custody after the offense occurred and before the sentence begins as long as the time in custody was “related to” the offense, subject to the exceptions in subdivisions (1) through (3).

Farish is not entitled to credit for time in Kansas after Missouri lodged a “detainer” (here, an arrest warrant) against him. Subdivision (2) of section 558.031.1 limits credit to time in custody in Missouri or custody outside Missouri that is “compelled exclusively” by Missouri. In a case of first impression, this Court interprets the words “compelled exclusively” according to their plain and ordinary meaning such that time in custody outside Missouri must be unilaterally caused by Missouri action. That did not happen here. A detainer merely is a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent. The time he spent in custody in Kansas was not “compelled exclusively” by the Missouri detainer because the time did not originate as a result of Missouri action and continued as a result of his Kansas charge.

Farish also is not entitled to credit for all time served on his Kansas sentence that ran concurrently with his Missouri sentence. The time he spent serving his Kansas sentence is not “related to” the offense on which he seeks credit, as required by section 58.031.1, because he would have been in prison in Kansas regardless of his Missouri offense. Further, the sentencing court lacked authority to award credit not authorized by section 558.031.1, which contemplates an administrative determination by the corrections department – not a judicial determination – of jail time to be credited. To the extent the sentencing court’s judgment is inconsistent with section 558.031.1, that portion of the judgment is of no effect.