

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

WOODROW ANDERSON,

Appellant,

v.

LARRY CRAWFORD,

Respondent.

DOCKET NUMBER WD70300

Date: May 11, 2010

Appeal from:
COLE COUNTY Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:
Division One: Lisa White Hardwick, Presiding Judge, James M. Smart Jr. and Alok Ahuja,
Judges

Attorneys:
Woodrow Anders, Appellant Acting Pro Se, for appellant.
Stephen D. Hawke, Esq., Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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WD70300

Cole County

Before Division One Judges: Lisa White Hardwick, Presiding Judge, James M. Smart Jr. and Alok Ahuja, Judges

Woodrow Anderson filed a declaratory judgment action against the Department of Corrections, alleging that the Department wrongfully denied him credit for time served on the twenty-year concurrent sentences for which he is presently incarcerated. The circuit court granted judgment on the pleadings in the Department's favor. Anderson appeals.

According to Anderson's petition, in October 1995 he was on parole from a twelve-year sentence for a robbery conviction (the "first conviction") when he was arrested and charged with one count of robbery in the first degree and armed criminal action. Based on his arrest on the new charges, Anderson's parole was revoked on the first conviction, and he was returned to the Department's custody.

Anderson was convicted of the new charges of robbery and armed criminal action in August 1996 (his "second conviction"), and was sentenced to twenty years' imprisonment on each count, with the sentences to be served concurrently to each other, and concurrently to his sentence on the first conviction. Anderson's petition alleges that in September 1996 he was returned to the Department to serve his concurrent sentences.

Anderson appealed the second conviction. He alleges that, in May 1997, family members posted an appeal bond to secure his release from custody with respect to the second conviction, pending his appeal. However, because he was separately subject to incarceration due to the revocation of parole on his first conviction, Anderson remained incarcerated.

On October 27, 1997, the Southern District affirmed Anderson's second conviction.

Anderson was released by the Department on April 18, 1998. His Petition alleges that he was released because he had completed serving the sentence on his first conviction, and despite the fact that he remained subject to the sentences on his second conviction. Anderson's petition alleges that, at the time of his release, he was unaware of the affirmance of his second conviction, and that over the next two years he continued to inquire of law enforcement

authorities as to the status of his appeal. Anderson remained at large for almost two years, until April 2000, when an arrest warrant was issued by the appellate court and he was returned to the Department's custody.

In calculating the time Anderson had served on his sentences on the second conviction, the Department excluded the entire period from the original date of the posting of the appeal bond on his second conviction, through the date of his return to the Department in April 2000.

REVERSED AND REMANDED.

Division One holds:

In reviewing the entry of a judgment on the pleadings, we are required to accept as true all allegations of Anderson's petition. Reviewed in that light, the trial court erred in concluding that Anderson could not prove any set of facts entitling him to relief.

First, Anderson's petition alleges that he began serving his sentences on the second conviction in September 1996. Under § 558.031.1, RSMo, time served in prison by Anderson after that date would normally be applied against his sentences on the second conviction. The Department contends, however, that Anderson's posting of an appeal bond terminated his service of his sentences on his second conviction. However, such time is only excluded when a convicted defendant is "free on bail," and "not in jail or custody." Here, Anderson alleges that he remained incarcerated despite the posting of the appeal bond. Further, it appears Anderson was not even eligible for an appeal bond, since he was not entitled to conditional release pending appeal due to the revocation of his parole on his first conviction. Anderson's petition thus states a claim for credit for time served from May 1997 through April 1998.

The Department argues that the period during which Anderson was released from prison, from April 1998 through April 2000, should be excluded from time-served credit because Anderson was released on his appeal bond. However, Anderson's convictions had been affirmed months earlier, and the appellate proceedings concluded. The appeal bond could not continue in effect following the conclusion of appellate proceedings. It thus appears from Anderson's petition that he may have been erroneously released. Prior decisions recognize that the sentence of a convicted defendant may continue to run even while he is at liberty, if the defendant is erroneously released without any contributing fault on his part. The allegations of Anderson's petition state a potential claim under this principle.

Anderson has thus alleged a claim which cannot be finally resolved without further factual development before the trial court. The judgment is accordingly reversed, and the case remanded for further proceedings.

Opinion by: Alok Ahuja, Judge

May 11, 2010

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