

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

ANDREW FARISH

Appellant

v.

MISSOURI DEPARTMENT OF CORRECTIONS

Respondent

DOCKET NUMBER WD75235

DATE: March 5, 2013

Appeal From:

Circuit Court of Cole County, MO
The Honorable Jon Edward Beetem, Judge

Appellate Judges:

Division One
Thomas H. Newton, P.J., Joseph M. Ellis, and Gary D. Witt, JJ.

Attorneys:

Andrew Farish, Cameron, MO

Appellant Acting Pro Se

Attorneys:

Michael Spillane, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

ANDREW FARISH, Appellant, v. MISSOURI
DEPARTMENT OF CORRECTIONS, Respondent

WD75235

Cole County

Before Division One Judges: Newton, P.J., Ellis, and Witt, JJ.

Farish had Missouri charges pending against him while he was in Kansas custody awaiting the disposition of his Kansas charge. Farish was convicted of his Kansas charge and sentenced to Kansas prison. Over a year later, he was convicted of his Missouri charges and sentenced to MDOC. The Missouri court ordered his sentences to run concurrently with his Kansas sentence. A few months later, Kansas paroled Farish via a detainer to Missouri. After being in a Missouri jail for a couple of months, Farish was transported to a Missouri prison. MDOC gave Farish jail time credit for the time he spent in Missouri jail awaiting the disposition of his Missouri charges. Farish sought declaratory relief from the circuit court, asking the court to determine that he was entitled to all of the time he spent in jail awaiting disposition of his Missouri charges and thereafter while waiting to be transferred to MDOC. MDOC sought summary judgment. The circuit court partially granted MDOC's motion. It declared that Farish was only entitled to credit for time served during certain periods in which he was in a Missouri jail awaiting disposition of his Missouri charges. It further found that he was not entitled to any credit for time served after he began serving his Kansas sentence. Farish appeals, raising five points.

REVERSED AND REMANDED.

Division One Holds:

Farish argues that he was entitled to jail time credit for (1) his time spent in Kansas custody awaiting disposition of his Kansas charges because he was on a Missouri detainer and (2) for his time spent serving his Kansas sentence awaiting disposition of his Missouri charges because some of that time was spent in a Missouri jail and the circuit court had ordered his Missouri sentences to run concurrently with his Kansas sentence.

Summary judgment is properly granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. We first consider Farish's time in custody before he began serving his Kansas sentence. A person is entitled to credit for time served against a Missouri sentence while awaiting disposition of his case, even if he is in the custody of another state, as long as Missouri exclusively compelled his custody. Missouri exclusively compels custody when the action of Missouri is the reason the person is detained. Thus, the circuit court erred in declaring that Farish was entitled only to credit for the periods of detention during which he was awaiting disposition of his Missouri charges when he was physically in a Missouri jail. If the Kansas offense was bailable, Farish would be entitled to credit for the time he spent in Kansas and Missouri jails awaiting disposition of his Missouri charges. The motion for summary judgment does not reveal whether Farish's Kansas offense

was bailable, and thus, MDOC did not show it was entitled to judgment as a matter of law. We grant Farish's second and part of his fourth points.

We next consider Farish's custody after he began serving his Kansas sentence while still awaiting disposition of his Missouri charges and subsequently awaiting transfer to a Missouri prison. Once a person begins serving a foreign sentence, jail time credit in Missouri ceases because their custody is not exclusively compelled by Missouri. However, if the sentencing courts orders the Missouri sentence to run concurrently with the foreign sentence, a person's Missouri sentence starts on the date of the Missouri sentencing, even if the person remains in custody of the foreign jurisdiction. Here the circuit court erred in denying credit for time served after Farish's Missouri sentence commenced while he was in Kansas custody. We deny Farish's first and fifth points and partially grant his third and fourth points.

Therefore, we reverse the circuit court's summary judgment and remand the case for further proceedings consistent with this opinion.

Opinion by Thomas H. Newton, Presiding Judge

March 5, 2013

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