



**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

<b>ANDREW FARISH,</b>	)	
	)	<b>WD75235</b>
<b>Appellant,</b>	)	
<b>v.</b>	)	<b>OPINION FILED:</b>
	)	
<b>MISSOURI DEPARTMENT OF</b>	)	<b>March 5, 2013</b>
<b>CORRECTIONS,</b>	)	
	)	
<b>Respondent.</b>	)	

**Appeal from the Circuit Court of Cole County, Missouri  
Honorable Jon Edward Beetem, Judge**

**Before: Thomas H. Newton, P.J., Joseph M. Ellis, and Gary D. Witt, JJ.**

Mr. Andrew Farish appeals the circuit court's grant of summary judgment in favor of the Missouri Department of Corrections (MDOC) on his declaratory judgment action for additional jail time credit. We reverse in part and remand.

**Factual and Procedural Background**

Mr. Farish was in custody of the State of Kansas awaiting disposition of charges against him from February 20, 2008 until December 31, 2008, when he began serving his Kansas sentence in the Kansas Department of Corrections (KDOC). On April 6, 2009, while still serving his Kansas sentence, Mr. Farish was transferred to a jail in Missouri to answer charges pending against him since February 19, 2008. On February 21, 2008,

Missouri issued an arrest warrant for Mr. Farish. On March 5, 2010, Mr. Farish was sentenced to terms of imprisonment after he pled guilty to the Missouri charges. He later returned to KDOC.

On August 19, 2010, Mr. Farish returned to a jail in Missouri for a court appearance; about two weeks later, KDOC released him on parole to Missouri via a detainer. On October 20, 2010, MDOC took physical custody of him. MDOC credited his sentence 406 days (April 6, 2009 through March 15, [2010], and August 19, 2010 through October 20, 2010), which consisted of the time he spent in Missouri custody while awaiting disposition of his Missouri charges.

Mr. Farish filed an action for declaratory judgment. He asked the circuit court to order the MDOC to credit him with time served for his Missouri convictions for the entirety of the period between February 21, 2008, and October 20, 2010. MDOC filed a motion for summary judgment and later filed an amended motion for summary judgment. MDOC asked the court to grant summary judgment in part to Mr. Farish and in part to MDOC. The circuit court granted MDOC's motion. It ordered MDOC to credit Mr. Farish's sentence for periods in 2008 during which he was physically in a jail in Missouri because "that time [was] related to his Missouri offenses because, absent the Kansas charges, he would have been imprisoned on the Missouri charges." It denied credit for any time between December 31, 2008, when Mr. Farish began serving his Kansas sentence, and October 20, 2010, when MDOC took custody of him, citing section 558.031. Mr. Farish appeals.

### **Standard of Review**

We review a trial court's summary judgment under an essentially *de novo* standard. *Mudloff v. Mo. Dep't of Corr.*, 53 S.W.3d 145, 146 (Mo. App. W.D. 2001). We will affirm unless we find that the moving party is not entitled to judgment as a matter of law or determine that there is a genuine dispute of material fact. *Id.*; *Howard v. Mo. Dep't of Corr.*, 341 S.W.3d 857, 858 (Mo. App. W.D. 2011).

### **Legal Analysis**

Mr. Farish raises five points on appeal. He claims that the trial court erred: (1) in declaring that section 558.031.1 controlled his request for jail time credit rather than section 558.026.3; (2) in failing to find that he was entitled to credit for time served in the Kansas jail before he received his Kansas sentence while Missouri had a detainer against him; (3) in failing to find that he was entitled to credit for time served in the Jackson County, Missouri jail from April 6, 2009, to August 30, 2010, during which he was awaiting disposition of Missouri charges; (4) in failing to find that he was entitled to credit for time served from February 21, 2008 to October 20, 2010; and (5) in permitting MDOC to alter the final judgment from the Missouri court sentencing him to concurrent terms with his Kansas sentence. In sum, Mr. Farish claims that he was entitled to jail time credit for his time spent in Kansas custody *awaiting disposition of his Kansas charges* because he was on a Missouri detainer and 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.

Section 558.031.1<sup>1</sup> states in relevant part:

1. A sentence of imprisonment shall commence when a person convicted of a crime in this state is received into the custody of the department of corrections or other place of confinement where the offender is sentenced. Such person shall receive credit toward the service of a sentence of imprisonment for all time in prison, jail or custody after the offense occurred and before the commencement of the sentence, when the time in custody was related to that offense, except:

(1) Such credit shall only be applied once when sentences are consecutive;

(2) Such credit shall only be applied if the person convicted was in custody in the state of Missouri, unless such custody was compelled exclusively by the state of Missouri's action; and

(3) As provided in section 559.100, RSMo.

We find this case to be similar to *Lynch v. Missouri Department of Corrections*, 267 S.W.3d 796, 799 (Mo. App. E.D. 2008). In *Lynch*, the circuit court had determined that time credit was properly denied based on the prisoner's admission in his allegations that his time in custody prior to his guilty plea for a federal offense was compelled by federal officials. *Id.* at 797-98. We reversed, stating that section 558.031.1(2) entitles a prisoner to "credit for time in related custody that was compelled exclusively by the action of . . . Missouri but was not spent in . . . Missouri. It does not require that the custody both be in the state of Missouri and be compelled exclusively by . . . Missouri." *Id.* at 799. "Compelled exclusively by Missouri," means that the person otherwise would not be in custody but for Missouri's actions. *See id.* Thus, a person's custody is no longer compelled by Missouri once that person starts serving a foreign sentence, even if

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<sup>1</sup> Statutory references are to RSMo 2000.

that person is still awaiting disposition of Missouri charges. *See Mudloff*, 53 S.W.3d at 150.

Here, Mr. Farish's custody from February 20, 2008 to October 20, 2010 was compelled by Kansas, but that did not automatically preclude him from receiving Missouri credit for that time served. If Missouri also compelled his custody, Mr. Farish was entitled to credit from the time Missouri compelled his custody until the time he began serving his Kansas sentence because at that point, by virtue of the execution of the sentence regardless of any Missouri charges, Mr. Farish's custody would then have been exclusively compelled by Kansas. *See Lynch*, 267 S.W.3d at 799. However, Mr. Farish would be precluded from obtaining credit for that time served prior to beginning his Kansas sentence if his Kansas offense was nonbailable, because then Missouri would not have compelled his custody. *See Mikel v. McGuire*, 264 S.W.3d 689, 692 (Mo. App. W.D. 2008).

MDOC's uncontroverted statement of facts did not allege that Mr. Farish's Kansas offense was not bailable. In fact, in its suggestions in support of its amended summary judgment, MDOC states that Mr. Farish would have been imprisoned on Missouri charges absent the Kansas charges. Thus, a genuine issue of material fact exists as to whether the Missouri charges compelled Mr. Farish's custody. Consequently, the trial court erred in granting partial summary judgment in MDOC's favor and awarding Mr. Farish credit for the period between February 21, 2008, and December 31, 2008 for only the times in which Mr. Farish was in custody in Missouri, but not for the times in which he was in custody in Kansas. We grant Mr. Farish's second and part of his fourth points.

We next consider whether Mr. Farish was entitled to Missouri credit for serving his Kansas sentence until he was paroled to Missouri on a detainer on August 30, 2010. Mr. Farish claims that he was entitled to the credit because the trial court had ordered his Missouri sentence to run concurrent with his Kansas sentence. The trial court's sentencing order states, "Sentence imposed in this case is to run concurrently with sentence imposed in KS . . . and all other time served. It is further ordered and adjudged defendant is given credit for all time served on the charges herein."

This court has consistently held that a sentencing court is without power to award jail time credit through its judgment because section 558.031 contemplates action taken by MDOC. *State ex rel. Nixon v. Dierker*, 22 S.W.3d 787, 790 (Mo. App. E.D. 2000); *see also Donaldson v. Crawford*, 230 S.W.3d 340, 343 (Mo. banc 2007) (stating that section 559.100 provides an exception to this general rule for the calculation of time served on probation). Thus, the trial court's language, to the extent it could be argued that the court attempted to give Mr. Farish jail time credit for time served prior to his sentencing in Missouri, is of no effect. Rather, the effect of that order is that "the sentences run together during the time that the periods overlap." *Collar v. Mo. Dep't of Corr.*, 314 S.W.3d 386, 389 (Mo. App. W.D. 2010) (internal quotation marks and citation omitted). An inmate "is not entitled to credit on the later sentence for the period served prior to such sentence, particularly where the sentences are imposed by different courts in different jurisdictions." *Id.* (internal quotation marks omitted). Consequently, Mr. Farish's eligibility for Missouri jail time credit ended when he began serving his sentence for his Kansas convictions. However, the calculation of his Missouri sentence starts at

March 5, 2010, when his Missouri sentence began to run concurrently with his Kansas sentence, rather than October 20, 2010, which was when MDOC took physical custody of him. The trial court properly granted MDOC's summary judgment as it relates to the period between December 31, 2008, to March 4, 2010, but not as it relates to March 5, 2010 to October 20, 2010. We deny Mr. Farish's first and fifth points and partially grant his third and fourth points.

### **Conclusion**

Therefore, we reverse and remand to the trial court for further proceedings consistent with this opinion.

/s/ THOMAS H. NEWTON  
Thomas H. Newton, Presiding Judge

Ellis and Witt, JJ. concur.