

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000677-MR

MARCUS BUFORD

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 00-CR-00292

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING WITH DIRECTIONS

** ** * ** * ** *

BEFORE: COMBS, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Marcus Buford brings this *pro se* appeal from a March 13, 2012, final judgment of the McCracken Circuit Court upon a conditional guilty plea to first-degree sexual abuse. Kentucky Rules of Criminal Procedure (RCr) 8.09. We affirm in part, reverse in part, and remand with directions.

Appellant was charged and arrested for first-degree sexual abuse in 2000. He was subsequently indicted by a McCracken County Grand Jury upon two counts of first-degree sexual abuse. A jury trial ensued, and he was found guilty upon both charges. In 2006, the Kentucky Supreme Court reversed his conviction and remanded for a new trial in *Commonwealth v. Buford*, 197 S.W.3d 66 (Ky. 2006). Upon remand, the Commonwealth and appellant entered into a plea agreement. Thereunder, appellant entered a guilty plea to two counts of first-degree sexual abuse, and he was sentenced to a total of five-years' imprisonment, which was probated. He was also ordered to register as a sexual offender for ten years; the requirement of a ten-year registration period instead of lifetime registration was a specific issue in the plea agreement.

After the judgment was entered, the secretary of the Justice and Public Safety Cabinet informed the parties that Kentucky Revised Statutes (KRS) 17.520(2)(a)(4) mandated that appellant be a lifetime sexual offender registrant. Appellant then filed motions seeking to enforce the plea agreement or to set aside his guilty plea. Both were denied. An appeal ensued to the Court of Appeals, and in Appeal No. 2008-CA-001272-MR, reversed on October 2, 2009, the Court reversed and remanded holding that appellant must be permitted to withdraw his guilty plea.

Upon remand, appellant and the Commonwealth once again entered into a plea agreement. Thereunder, appellant entered a conditional guilty plea to one count of first-degree sexual abuse. In accordance with the plea agreement, the

circuit court sentenced appellant to five-years' imprisonment, but required no further probation term. As to appellant's sexual offender registration, the circuit court stated:

As stated in the attached correspondence from Graham Gray, a representative of the Kentucky State Police Sex Offender Registry section, the defendant, according to the Kentucky State Police, is required to register as a sex offender for a period of twenty (20) years. This position is also adopted by the Commonwealth. The defendant disagrees with this position; instead he argues that he should be subject to a ten (10) year period of sex offender registration.

The defendant shall be allowed to plead guilty to the Commonwealth's Offer on a Plea of Guilty and to appeal the sole issue of length or period of sex offender registration under this agreement. The defendant understands that it is the Commonwealth's position that he shall be required to register for a period of twenty (20) years. Should the defendant lose his appeal, he shall have no recourse through collateral attack, or any other means, to attack his guilty plea and conviction in this matter. Should the defendant win his appeal on this lone issue, the validity of the underlying guilty plea shall not be effected [sic] in any way; the defendant would be then entitled to another Sentencing Hearing whereby the Court would sentence the defendant to the period of registration consistent with the appellate court's opinion.

The court also noted that appellant's "registration as a sex offender is as of March 8, 2012." This appeal follows.

In this appeal, appellant contends that he should only be required to register as a sexual offender for ten years and that the circuit court improperly applied the current version of KRS 17.520 requiring him to register for twenty years. Appellant believes that KRS 17.520 as it existed in 2000 controls, and

under its provisions, he is only required to register for ten years as a sexual offender. We disagree.

The current version of KRS 17.520(1) reads:

A registrant, upon his or her release by the court, the Parole Board, the cabinet, or any detention facility, shall be required to register for a period of time required under this section.

KRS 17.520(1) clearly provides that its provisions are triggered only upon a defendant's "release" by court or detention facility and not at the time of the offense or conviction.

In this case, appellant was released from probation by the court upon entry of its March 13, 2012, judgment. As appellant was released on March 13, 2012, it was proper to apply the 2012 version of KRS 17.520, which subjected appellant to a twenty-year registration period. We, thus, reject this contention of error.

Appellant next argues that his constitutional guarantee of due process of law is violated by the *ex post facto* application of KRS 17.520 to increase his sexual offender registration period from ten to twenty years. Appellant believes the due process clause is violated by applying KRS 17.520 in its current version.

The Kentucky Supreme Court has clearly held that sexual offender registration statutes are "remedial measures" and are "not punitive." *Hyatt v. Com.*, 72 S.W.3d 566, 571 (Ky. 2002); *Martinez v. Com.*, 72 S.W.3d 581 (Ky. 2002). As the sexual offender registration does not constitute punishment, the Court held that no due process violation occurs by applying a sexual offender

registration statute enacted after a defendant was convicted of the offense subjecting him to such registration. *Hyatt*, 72 S.W.3d 566; *Martinez*, 72 S.W.3d 581.

Likewise, in our case, there is no violation of the due process clause. Appellant entered a guilty plea and was sentenced in 2012, and the court properly applied the current version of KRS 17.520.

Appellant finally contends that he should receive credit for the time he was properly identified on the sexual offender registry. Appellant points out that he was placed on the sexual offender registry on March 9, 2007, and remained on the sexual offender registry even after the Court of Appeals (Appeal No. 2008-CA-001272-MR) reversed and remanded the final judgment upon his guilty plea. Appellant believes that he should be credited with all the time his name has appeared on the sexual offender registry.

We think appellant is partially correct. As KRS 17.520 is triggered upon “release,” appellant is entitled to credit from the time of his first “release” to probation by the May 1, 2007, final judgment until the time of the Opinion of the Court of Appeals in Appeal No. 2008-CA-001272-MR on March 23, 2010. Upon the Court of Appeals’ reversal of the May 1, 2007, final judgment, appellant was no longer “released” upon probation but was instead awaiting final disposition of the criminal charges against him. See KRS 17.520(1). Thus, appellant is not entitled to credit after March 23, 2010. And, appellant was again “released” by the court upon entry of the March 13, 2012, final judgment. Therefore, upon remand,

we direct the circuit court to credit appellant with all time he was listed on the sexual offender registry from May 1, 2007, until March 23, 2010.

For the foregoing reasons, the order of the McCracken Circuit Court is affirmed in part, reversed in part, and remanded with directions to credit appellant with time served on the sexual offender registry from May 1, 2007, to March 23, 2010.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Marcus Buford, *Pro Se*
Cunningham, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky
Frankfort, Kentucky

J. Hays Lawson
Assistant Attorney General
Frankfort, Kentucky