

RENDERED: DECEMBER 7, 2001; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-002155-MR

HENRY E. HUDSON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE WILLIAM L. GRAHAM, JUDGE  
ACTION NO. 00-CI-00620

DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: JOHNSON, KNOPF AND MILLER, JUDGES.

JOHNSON, JUDGE: Henry E. Hudson has appealed from an order of the Franklin Circuit Court entered on July 17, 2000, which denied his petition for a declaration of rights requesting an award of meritorious-good-time credits. Having concluded that Hudson has no constitutionally-protected liberty interest in meritorious-good-time credits, we affirm.

The factual background of this case was set forth in the prior Kentucky Supreme Court case, Hudson v. Commonwealth.<sup>1</sup> On March 1, 1988, Hudson began serving a 14-year sentence under the custody and supervision of the Indiana Cabinet of Correction. On August 17, 1988, the Hopkins Circuit Court served Indiana authorities with a detainer warrant pursuant to a Kentucky indictment against Hudson. Hudson appeared before the Hopkins Circuit Court on March 6, 1989, and, pursuant to a plea agreement, pled guilty to the charge pending against him in exchange for a sentence of 20 years, to run concurrently with his Indiana sentence. Three days later, the Hopkins Circuit Court entered judgment on the guilty plea and the Hopkins County Sheriff delivered Hudson back to Indiana prison authorities. Hudson remained imprisoned in Indiana until March 1, 1995, when he was paroled.

Upon his release from prison in Indiana, that state's Corrections Cabinet officials immediately delivered Hudson to the Kentucky Department of Corrections and he began serving his Kentucky prison sentence. On March 1, 1996, after Hudson had completed one year of his conditional parole, the state of Indiana released Hudson from its custody. Since that date, Hudson has remained under the sole authority of the Kentucky Department of Corrections.

On May 19, 2000, Hudson filed a petition for a declaration of rights against the Kentucky Department of

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<sup>1</sup>Ky., 932 S.W.2d 371 (1996).

Corrections. Hudson's petition alleged that he should be awarded meritorious-good-time credits pursuant to KRS<sup>2</sup> 197.045(3). Since Hudson served the first part of his Kentucky sentence in Indiana, he argues that he was deprived of the annual reviews for meritorious-good-time credits that Kentucky inmates typically receive. Hudson now asks for a retroactive award of good time credits he might have received had he been serving his sentence in Kentucky. In support of his request, Hudson points out that he maintained a clean record during his period of incarceration in Indiana. He also states that Indiana Corrections authorities awarded him meritorious-good-time credits while he was imprisoned in Indiana. On July 17, 2000, the Franklin Circuit Court denied Hudson's petition and this appeal followed.

On appeal, Hudson argues that his constitutional due process rights were violated when the Commissioner of the Department of Corrections summarily denied his request for meritorious-good-time credits. At the very least, Hudson seeks a court order, requiring the Commissioner to grant him a formal hearing on the matter. Further, Hudson asserts that by failing to award him meritorious-good-time credits, the Commonwealth has reneged on its original plea bargain agreement.

In the absence of a legislative mandate, the Constitution does not guarantee good time credit for satisfactory

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<sup>2</sup>Kentucky Revised Statutes.

behavior while in prison.<sup>3</sup> Nonetheless, where a state has provided a statutory right to good time, Fourteenth Amendment "liberty" entitles the prisoner to the minimum procedures appropriate under the circumstances and required by the Due Process Clause to ensure that the state-created right is not arbitrarily abrogated.

Meritorious-good-time credit is an important element of our prison system in Kentucky. The statutory provision that created meritorious-good-time credit is contained in KRS 197.045(3). It provides:

An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed five (5) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.

The Department of Corrections has set forth the procedures and terms for awarding meritorious-good-time credit in CPP<sup>4</sup> 15.3. It provides that meritorious-good-time credit is "a good time credit that may be awarded for clear conduct and program participation."<sup>5</sup> CPP 15.3 also provides for final approval or

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<sup>3</sup>Wolff v. McDonnell, 418 U.S. 539, 557, 41 L.Ed.2d 935, 951, 94 S.Ct. 2963, 2975 (1974).

<sup>4</sup>Corrections Policy and Procedure.

<sup>5</sup>CPP 15.3(IV).

disapproval of a recommended award of meritorious-good-time credit at the discretion of the Commissioner of Corrections.<sup>6</sup>

The leading Kentucky case interpreting the issue of meritorious-good-time credit is Anderson v. Parker.<sup>7</sup> Anderson held that KRS 197.045(3) and CPP 15.3 grant broad discretion to prison officials in determining whether an inmate is entitled to meritorious-good-time credit. It held that “[n]o inmate has a right to meritorious good time” [emphasis added],<sup>8</sup> but instead meritorious good time is “a privilege bestowed at the discretion of the Commissioner.”<sup>9</sup> The Court stated that “[b]ecause the award of meritorious good time under CPP 15.3 is left entirely to the discretion of prison administrators, we hold inmates . . . have no protected liberty interest at stake in its’ [sic] denial.”<sup>10</sup>

Hudson argues that because he was not actually incarcerated in a Kentucky prison that he was not even considered for an award of meritorious good time, even though he was a model prisoner in the Indiana penal system. Given Hudson’s conduct record in Indiana, it may be that he would have qualified for meritorious good time had his petition been considered by Kentucky officials. Nevertheless, because meritorious good time

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<sup>6</sup>See CPP 15.3(VII) (F).

<sup>7</sup>Ky.App., 964 S.W.2d 809 (1997).

<sup>8</sup>Id. at 810.

<sup>9</sup>Id.

<sup>10</sup>Id.

is a privilege and not a statutorily-created right in Kentucky, Hudson has no constitutionally-protected liberty interest at stake. Hudson is therefore not entitled to either an award of meritorious good time or a formal hearing on his petition.

Similarly, we fail to see how a denial of meritorious good time constitutes a breach of the plea agreement between Hudson and the Commonwealth. The agreement merely stated that Hudson's 20-year Kentucky sentence would run concurrently with his already existing Indiana sentence. It did not specify that while Hudson was incarcerated in Indiana that he would receive the same privileges and considerations as a an inmate in the Kentucky penal system. It merely required that Hudson's Kentucky sentence run concurrently with his Indiana sentence. Hudson has already been credited in Kentucky with the seven years he spent in Indiana custody, and he is not entitled to any additional credits.<sup>11</sup>

For the foregoing reasons, we affirm the order of the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Keith Hardison  
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<sup>11</sup>See Hudson, supra, at 374.