

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-002151-MR

THOMAS BURDEN

APPELLANT

v.

APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE RODNEY BURRESS, JUDGE  
ACTION NO. 06-CR-00131

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KELLER AND LAMBERT, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Thomas Burden appeals *pro se* from an order of the Bullitt Circuit Court denying his motion for additional jail-time credit. We affirm.

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<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Burden was indicted by a Bullitt County grand jury in March 2006 on two counts of first-degree sexual abuse. In response to Burden's motion for bond reduction, the trial court ordered him to be released on home incarceration. On June 4, 2008, Burden pled guilty to the charges pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

On August 6, 2008, the trial court sentenced Burden to four years in prison pursuant to the plea agreement. The court also sentenced Burden to an additional five-year period of conditional discharge pursuant to KRS 532.060(3). Further, Burden was required to register with the appropriate agency as a sex offender for 20 years.

On August 26, 2008, the Commonwealth and Burden's counsel agreed to an order granting Burden 659 days of jail-time credit. This jail-time credit accounted for the time Burden had spent in jail between October 18, 2006, and August 6, 2008, but did not account for the period of time spent in home incarceration as a form of pretrial release.

On September 1, 2009, Burden filed a motion for additional jail-time credit pursuant to KRS 532.120(3). In response to Burden's motion, the trial court set a hearing and ordered Burden to submit a detailed list of dates for which he sought credit for time served. Burden failed to provide a specific list of dates, and the trial court denied Burden's motion. This appeal followed.

A motion for additional jail-time credit is treated like a motion under Kentucky Rules of Civil Procedure (CR) 60.02(a) because the motion is alleging a

mistake in the judgment and sentence. *Duncan v. Commonwealth*, 614 S.W.2d 701 (Ky. App. 1980). “The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion.” *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000). “Before the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.” *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). Thus, “[g]iven the high standard for granting a CR 60.02 motion, a trial court’s ruling on the motion receives great deference on appeal and will not be overturned except for an abuse of discretion.” *Barnett v. Commonwealth*, 979 S.W.2d 98, 102 (Ky. 1998). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principals.” *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000).

Burden contends that he is entitled to an additional 240 days of jail-time credit. He asserts that the 240 days spent in home incarceration as a condition of bail from December 13, 2007, until August 6, 2008, should count toward jail-time credit. KRS 532.120(3) states:

Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the court imposing sentence toward service of the maximum term of imprisonment. If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence shall be considered for all purposes as time served in prison.

A panel of this court held in *Buford v. Commonwealth*, 58 S.W.3d 490 (Ky. App. 2001), that “jail-time credit is not allowed for time spent in home incarceration where it is ordered as a form of pretrial release.” *Id.* at 491. In *Buford*, the appellants argued that the time they spent in home incarceration should count towards jail-time credit. *Id.* This court denied the appellants’ motion and held that the time spent in home incarceration did not count towards jail-time credit because it was ordered as a form of pretrial release. *Id.* at 492.

The trial court did not abuse its discretion by denying Burden’s motion for additional jail-time credit. Burden agreed to 659 days of jail-time credit while represented by counsel and failed to provide a detailed list of dates for additional credit. Further, Burden is not entitled to additional jail-time credit for time spent in home incarceration as a form of pretrial release.

The order of the Bullitt Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Thomas Burden, *pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

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