

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-002177-MR

JONATHAN L. HUNTER

APPELLANT

v. APPEAL FROM TRIGG CIRCUIT COURT  
HONORABLE CLARENCE A. WOODALL, III, JUDGE  
ACTION NOS. 12-CR-00020 AND 12-CR-00026

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, MAZE, AND TAYLOR, JUDGES.

MAZE, JUDGE: Jonathan Hunter appeals from the Trigg Circuit Court's denial of his Motion to Correct clerical mistakes made in his Order of Commitment.

Although errors initially existed in the record regarding the length of Hunter's sentence, the trial court corrected those errors in a prior order, and the Judgment of Conviction and Sentence correctly stated Hunter's sentence. Therefore, we affirm.

On December 12, 2012, while serving a ten-year sentence arising from a case in Christian County, Hunter pleaded guilty to several charges spanning two cases in Trigg County. In Case No. 12-CR-00020, the plea agreement read, in pertinent part, as follows:

**RECOMMENDATIONS ON A PLEA OF GUILTY  
(PLEA AGREEMENT):**

Five (5) years on count 1, five (5) years on count 2, five (5) years on count 3, five (5) years on count 4, ~~five (5) years on count 5~~, all concurrent for a total of five years. To run concurrent with 12-CR-00026, for a total of five years, consecutive with Christian County. Defendant agrees to waive PSI.

Hunter and his attorney signed this agreement.<sup>1</sup> The plea agreement in the second case, 12-CR-00026, read, in pertinent part, as follows:

**RECOMMENDATIONS ON PLEA OF GUILTY  
(PLEA AGREEMENT):**

Two (2) years on Count 1, to run concurrent with 12-CR-00020 for a total of five years. Defendant agrees to waive PSI. Consecutive with Christian County.

Hunter and his attorney also signed this plea agreement. At the sentencing hearing, during the plea colloquy, the trial court asked Hunter if it was his understanding that the two sentences would run concurrently to each other for a total of five years' imprisonment and that the five-year sentence would run consecutively to his sentence in Christian County. Hunter stated that he understood this. Moments later, however, as the trial court announced its formal sentence, it stated that the

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<sup>1</sup> The plea agreement originally referenced a fifth charge, seemingly in error. The trial court stated during the sentencing hearing that it was crossing through that reference to avoid confusion.

charges in Case No. 12-CR-00020 would run *concurrently* with his sentence in Christian County.

Six days later, the trial court entered its Final Judgment and Sentence on Plea of Guilty and Waiver of Pre-Sentence Report (hereinafter “Judgment”) in both cases. The trial court accepted Hunter’s pleas and sentenced him to five years “to run concurrent with Trigg 12CR026 but consecutive to time now serving from Christian County[.]” The trial court also signed an Order of Commitment (hereinafter “Order”). However, contrary to the Judgment, the Order listed the various counts and their respective sentences, then stating that Hunter would serve a “total [of] five years” “concurrent [with] Christian County Case [.]”

Hunter filed a Motion to Clarify Sentence regarding this conflict between the Judgment and Order. On April 4, 2013, the trial court entered an order vacating the “incorrect and inconsistent” language of the Order and clarifying that Hunter’s sentence, as stated in the Judgment, totaled fifteen years.

Hunter filed another Motion to Correct pursuant to Kentucky Rules of Civil Procedure (CR) 60.01 in which he argued that the Order, the trial court’s statements during his sentencing hearing, and the plea agreement established that his ten and five-year sentences were to run concurrently, not consecutively and that his sentence was twelve years, not fifteen.<sup>2</sup> The trial court, referencing its April 4, 2013 order, denied Hunter’s second Motion to Correct. Hunter now appeals.

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<sup>2</sup> In reaching this number, Hunter opined, based upon the trial court’s statement at sentencing, that the five and ten-year sentences were intended to run concurrently for a total of ten years, and that his two-year sentence was intended to run consecutively to the former two cases.

Hunter asks us to reverse the trial court's denial of his CR 60.01 motion. In reviewing a trial court's ruling on such a motion, we will affirm absent an abuse of the trial court's discretion. *See Aurora Loan Services v. Ramey*, 144 S.W.3d 295, 299 (Ky. App. 2004). Therefore, the denial of a CR 60.01 motion will stand unless it was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *See Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

CR 60.01 provides that a trial court may correct its "clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission" at any time or after a party moves for such a correction. Hunter's second CR 60.01 motion alleges not only that the trial court committed a clerical error, but that it was Hunter's understanding, and that of the trial court, that his five-year sentence would run concurrently, not consecutively, to the Christian County sentence. He claims that the trial court's misstatement at his sentencing hearing "can be interpreted to mean" that he was to serve twelve years, not fifteen. He further argues that this was the nature of the Commonwealth's plea offer and that the Commonwealth cannot now go back on the plea agreement.

The record demonstrates that Hunter's claims are misguided and that the misstatement and clerical error by the trial court were merely the products of mistake. Minutes before the trial court spoke incorrectly, Hunter unequivocally stated that he understood the fact that the five-year sentence would run consecutively to the Christian County sentence. Furthermore, the plea agreements, which Hunter and his attorney signed, and from which the trial court read during

sentencing, clearly show that the sentences in both cases were to run concurrently to each other and consecutively to the Christian County charge.

The Judgment accurately reflects the sentence for which Hunter bargained and to which he agreed. The clerical mistakes of the trial court do not alter this, nor could they, as the trial court has since corrected them.

For these reasons, the order of the Trigg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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