

RENDERED: January 23, 2004; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-002087-MR

GREGORY L. DUBOSE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS J. KNOFF, JUDGE  
INDICTMENT NO. 92-CR-003513

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: McANULTY, MINTON, and SCHRODER, Judges.

MINTON, Judge: Gregory Dubose appeals the denial of his motion for additional jail time credit. He argues that he should be entitled to additional credit for 120 days spent in jail, as well as time spent in a home incarceration program.

On November 11, 1992, Dubose was arrested for burglary in the second degree. While awaiting trial on that charge, he

was convicted of the misdemeanor offense of theft by unlawful taking of an amount under \$100.00, for which he was sentenced to 120 days in jail. This 120 days was subtracted from the total time he spent in jail awaiting his trial on the charge of burglary in the second degree.

Kentucky Revised Statutes (KRS) 532.120(3) provides in relevant part:

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.

Very simply, the 120 days' incarceration in question was not spent pursuant to the burglary II charge for which Dubose was ultimately sentenced to five years. Therefore, he was not entitled to credit for those 120 days against his burglary sentence.

Dubose's argument that he should be given credit for the time he spent in home incarceration awaiting trial was rejected by this Court in Buford v. Commonwealth.<sup>1</sup> In Buford, we held that time spent in home incarceration as a form of pretrial release is not to be credited against the final sentence imposed

---

<sup>1</sup> Ky.App., 58 S.W.3d 490 (2001).

following trial.<sup>2</sup> Therefore, Dubose was not entitled to credit for time spent in home incarceration.

Accordingly, the circuit court was correct to deny Dubose's motion for jail time credit. Its order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gregory Dubose, pro se  
Pineville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
ATTORNEY GENERAL

Anitria M. Alo  
ASSISTANT ATTORNEY GENERAL  
Frankfort, Kentucky

---

<sup>2</sup> Id. at 491.