

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000108-MR

JIMMY HENSON

APPELLANT

v. APPEAL FROM RUSSELL CIRCUIT COURT  
HONORABLE EDDIE C. LOVELACE, JUDGE  
ACTION NOS. 95-CR-00055 AND 96-CR-00004

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

VACATING AND REMANDING

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

BEFORE: BUCKINGHAM, McANULTY AND PAISLEY, JUDGES.

PAISLEY, JUDGE. This is a pro se appeal from an order entered by the Russell Circuit Court denying appellant's motion for reconsideration of custody credit for time served under indictment numbers 95-CR-00055 and 96-CR-00004. For the reasons stated hereafter we vacate the court's order denying appellant's motion for reconsideration, and we remand this matter to the trial court for entry of an order specifically

granting appellant custody credit for 365 days of jail time previously served.

Appellant was arrested on July 20, 1995, for a charge of first-degree sexual abuse. He was released four days later. Appellant was rearrested on January 15, 1996, for a second charge of first-degree sexual abuse. He was released on bond after remaining in jail for twenty-five days. On September 8, 1997, appellant pled guilty to both charges. As a condition of probation he was ordered to serve twelve months in the county jail, where he remained for 281 days before being released to serve the remaining days in home incarceration due to health problems. He later returned to jail due to a probation violation. This appeal follows the trial court's denial of appellant's motion for reconsideration of the amount of custody credit provided for time served prior to the revocation of his probation.

Appellant asserts on appeal that he was given credit for only 259 days of the 310 days which he calculates he spent in jail in connection with these cases, with the result that he is entitled to 51 additional days of credit. The commonwealth not only admits that appellant was not given full credit for time spent in jail, but it in fact states that on January 19, 2000, the trial court determined during an evidentiary hearing and then stated in a docket entry that appellant was entitled to

365 days credit for time previously served. However, the subsequent order revoking probation failed to reflect a specific amount of credit for jail time previously served, and it is undisputed that the Department of Corrections' records reflect custody credit for only 259 days. We therefore believe it is necessary to vacate the court's order denying appellant's motion to reconsider its previous order regarding custody credit, and to remand this matter for the sake of clarification.

This matter is remanded to the Russell Circuit Court with directions both to vacate the order denying appellant's motion to reconsider, and to enter an appropriate order clarifying that appellant is entitled to a total of 365 days custody credit for jail time previously served. Upon entry, the Clerk of the Russell Circuit Court shall forward a copy of the order to the Department of Corrections.

ALL CONCUR.

BRIEF FOR APPELLANT - Pro Se:

Jimmy Henson  
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BRIEF FOR APPELLEE:

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