

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001953-MR

MCKENZIE STONE BRADFORD

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
INDICTMENT NO. 99-CR-00868

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, DYCHE, AND JOHNSON, JUDGES.

DYCHE, JUDGE. McKenzie Stone Bradford was initially convicted by his plea of guilty to two counts of criminal possession of a forged instrument, second degree. KRS 516.060. The trial court entered a final judgment and sentence to probation on November 15, 1999. Bradford twice failed to comply with the terms of his probation, and on March 27, 2001, the trial court entered a final sentence revoking his probation and sentencing him to a total indeterminate sentence of five years in the penitentiary.

On June 6, 2001, Bradford wrote a letter to the court asking for a credit of ninety days toward his sentence for time he spent in custody (thirteen days) and in home incarceration (seventy-seven days) prior to the revocation of his probation. The trial court's secretary replied that he was due no credit. On September 3, 2002, Bradford filed a motion again seeking credit for additional time against his sentence. The motion was denied, and this appeal followed.

The Commonwealth initially argues, citing *Duncan v. Commonwealth*, Ky. App., 614 S.W.2d 701 (1980), that Bradford is procedurally barred from the relief he seeks, since his motion was not filed within one year of the final judgment. *Duncan* held that such a motion was in the nature of a CR 60.02 motion to correct a clerical error, rather than a motion to vacate under RCr 11.42, and that the one-year limit in CR 60.02 therefore applied.

While there might be some merit to that argument, Bradford did timely send a letter to the trial court seeking credit for the time he served prior to revocation of his probation. We will therefore consider the merits of his case.

Bradford was initially sentenced to probation with an alternative sentence of ninety days in the Community Alternative Program, which would permit him to be subject to home incarceration, go to work, and receive treatment for a gambling

problem. He failed to enroll in the program, and the court modified his sentence on motion of the Commonwealth, adding six days' confinement for the failure to enroll.

He again violated the terms and conditions of his probation after entering the program, by failing to comply with the requirements of calling in to the probation office at specified times, and being available for calls from his probation officer. He also was convicted, by plea of guilty, to two counts of theft by deception, and failed to report another arrest for felony charges. His probation was revoked, and he was sentenced as above described. He seeks credit for the time served on home incarceration in the "CAP" program.

Bradford was sentenced to an alternative sentence under KRS 533.020(2), and his sentence was modified and then revoked pursuant to KRS 533.010(7). He was not entitled to credit for the time in home incarceration; KRS 533.060(6) requires such credit for sentences imposed "under this subsection." He was not sentenced under KRS 533.060(6).

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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