

RENDERED: APRIL 22, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-000213-MR

CRAIG DUNN

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 03-CI-01195

DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JOHNSON AND McANULTY, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

McANULTY, JUDGE: Inmate Craig Dunn, pro se, appeals from the Franklin Circuit Court's dismissal of his petition for declaration of rights seeking relief as to the period of confinement in the penitentiary on his sentence. We have reviewed the record in this case, and we find no error in the decision of the Franklin Circuit Court. Thus, we affirm.

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<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Dunn argues that his constitutional rights were violated when the Department of Corrections (hereinafter Corrections) "added" seventeen months onto his time to serve. His resident record card reflects one year and five months as "cumulative good time lost." The Franklin Circuit Court correctly stated that the award of good time credit is discretionary as per the language of KRS 197.045. Dunn has not shown any reason why the good time which he lost should be restored to him. Moreover, the court below correctly showed that since Corrections credits an inmate with good time when initially calculating the inmate's conditional release date, loss of Dunn's good time credits was not an increase of his sentence.

Next, Dunn argues that he was not credited with the time he spent in custody prior to commencement of his new sentence following a retrial. KRS 197.041 states that:

If a defendant is confined in the penitentiary during the pendency of an appeal and, on reversal, is again convicted, he shall be given credit for the period so confined in determining his date of eligibility for parole and his date of release by expiration of sentence.

We affirm the circuit court's finding that Dunn's resident record card shows that Corrections credited the time served by calculating Dunn's expiration date of his sentence from the date

Dunn was originally received in the institution on his original sentence.

Finally, Dunn complains because Corrections continues to use his former sentencing date to calculate the time on his new forty year sentence. Corrections lists the date of Dunn's original sentence of February 25, 1976, as the "DATE SENTENCED/RECEIVED" for purposes of calculating Dunn's minimum expiration date and maximum expiration date. Dunn fails to show that Corrections' method of calculation is unsound or that he is entitled to any time off his sentence which he has not received.

We affirm the order of the Franklin Circuit Court which denied Dunn's petition for declaration of rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

Craig Dunn, Pro Se  
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Brenn O. Combs  
Frankfort, Kentucky