

# Commonwealth Of Kentucky

## Court Of Appeals

No. 1997-CA-002661-MR

WALTER BRADLEY PERRY

APPELLANT

V. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE DANIEL J. VENTERS, JUDGE  
ACTION NO. 90-CR-0060

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

BEFORE: GARDNER, HUDDLESTON and KNOX, JUDGES.

GARDNER, JUDGE. This is an appeal by Walter Perry from orders of the Pulaski Circuit Court denying his motion pursuant to Kentucky Rule of Civil Procedure (CR) 60.02 to vacate his convictions for various sexual offenses, denying his motion to enter findings of fact and conclusions of law, and denying his motion requesting that the trial court take judicial notice of various legal authorities. We affirm.

In April 1990, Perry was indicted by a Pulaski County Grand Jury on three counts of first-degree sexual abuse and two counts of first-degree sodomy. Perry subsequently pled guilty to

the charges. In March 1995, Perry was granted permission to file a belated appeal, and in June 1996, the Kentucky Supreme Court affirmed his convictions. In June 1997, Perry filed a CR 60.02 motion with the Pulaski Circuit Court seeking to vacate his conviction.<sup>1</sup> On July 2, 1997, the trial court issued an order denying the motion. Perry subsequently filed a motion to enter findings of fact and conclusions of law, and a motion to take judicial notice of adjudicative facts. On October 6, 1997, the trial court denied these motions.<sup>2</sup> This appeal followed.

Perry's contention that the Pulaski Circuit Court does not have subject matter jurisdiction over a felony committed in Pulaski County is without merit. Circuit courts have jurisdiction over felonies. Kentucky Revised Statute (KRS) 23A.010; KRS 24A.110; Keller v. Commonwealth, Ky., 594 S.W.2d 589, 592 (1980). The proper forum in which a felony case is to be prosecuted is the circuit court in the county or city in which the offense was committed. KRS 452.510; Commonwealth v. Cheeks, Ky., 698 S.W.2d 832, 834-35 (1985). Furthermore, to the extent that Perry's CR 60.02 motion challenges the constitutionality of various statutes because they allegedly violate the enacting clause provisions of Section 62 of the Kentucky Constitution, the question of the

---

<sup>1</sup>In its brief the Commonwealth refers to this filing as a Kentucky Rule of Criminal Procedure (RCr) 11.42 action; however, the motion was plainly styled as a CR 60.02 motion.

<sup>2</sup>This order did not specifically deny the outstanding motion seeking judicial notice and there does not appear to be a final and appealable order specifically addressing this issue in the record; however, the issue was specified in Perry's notice of appeal, and the Commonwealth has not sought to exclude the issue from review. Hence, for purposes of judicial economy, we will address the issue.

constitutionality of a statute cannot be put in issue under CR 60.02. Richardson v. Brunner, Ky., 356 S.W.2d 252 (1962), cert. denied, 371 U.S. 815, 83 S.Ct. 27, 9 L.Ed.2d 56, reh'g. denied, 371 U.S. 906, 83 S.Ct. 204, 9 L.Ed.2d 167 (1962).

Perry argues that the trial court erred when it denied his motion to enter findings of fact and conclusions of law pursuant to CR 52.02 and CR 52.04. This claim is without merit. Perry's motion alleged that the trial court lacked subject matter jurisdiction over his case. With respect to this allegation, the trial court made the following findings of fact and conclusions of law:

The Movant was properly indicted for an offense which occurred in Pulaski County, Kentucky. The indictment charged the Movant with a felony offense. He plead [sic] guilty to a felony offense. The Pulaski Circuit Court has subject matter jurisdiction over felony offenses committed in Pulaski County, Kentucky.

CR 52.01 requires a trial court, in actions tried without a jury, to find the facts specifically and state separately its conclusions of law thereon. There is compliance with the rule when the court's opinion shows a comprehension of the evidence, a decision as to the material issues of fact, and an application of the law to such issues. Shepherd v. Shepherd, Ky., 295 S.W.2d 557 (1956). The findings of fact and conclusions of law set forth by the trial court satisfy this standard, and there was no error.

Perry next argues that the trial court erred when it ignored his motion to take judicial notice of adjudicative facts when the Commonwealth did not oppose his motion. Perry's motion requests that the trial court take judicial notice of various legal

authorities, including various constitutional provisions, statutes, and court decisions. Prior to the Kentucky Rules of Evidence (KRE) statutes providing for judicial notice of, among other things, the common law and statutes of other states have been repealed. The KRE contain no provision on judicial notice of the law. The committee drafting the rules considered the need for such a rule but rejected the idea "because it believe[d] that judges should not be restricted in any way in researching the applicable law." Evidence Rules Study Committee, Kentucky Rules of Evidence, Final Draft, pp 15, n. 77. See generally Robert G. Lawson, The Kentucky Evidence Law Handbook, § 1.00, @ 15 (3d ed. 1993). Hence, while the issue has yet to be passed on, it would appear that with the adoption of the Kentucky Rules of Evidence, there is no requirement that the trial court take judicial notice of the law. Accordingly, the trial court did not err in refusing to grant Perry's motion.

For the foregoing reasons, we affirm the orders of the Pulaski Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Walter Bradley Perry, Pro Se  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler III  
Attorney General  
  
Amy Howard  
Assistant Attorney General  
Frankfort, Kentucky