

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000447-MR

JAMES F. FAIRROW

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE CHARLES W. BOTELER, JR., JUDGE
ACTION NO. 98-CI-00204

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER DISMISSING

** ** * * * * *

BEFORE: DYCHE, McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from the denial of appellant's "Motion for an Appealable Order" by the Hopkins Circuit Court. The motion was filed over three years after a final judgment. After reviewing the record and the applicable law, we dismiss the appeal as untimely.

On October 27, 1995, appellant, James Fairrow, was charged in Hopkins Circuit Court with possession of drug paraphernalia and trafficking in marijuana under five pounds. On November 16, 1995, appellant pled guilty in Hopkins District Court to an amended charge of trafficking in marijuana under eight ounces. The record shows that, as part of the plea agreement, all property seized at the time of appellant's arrest was to be forfeited to the Commonwealth. Appellant states that

this property consisted of \$590.00 in cash, one flip cellular phone, \$300.00 in food stamps, and a scanner worth \$125.00. There was no appeal.

In 1997, appellant filed a motion for return of the seized property. The Hopkins District Court denied the motion on October 1, 1997, noting that the property was to be forfeited to the Commonwealth as part of the plea agreement. Appellant filed a motion for reconsideration of his motion for return of property, which was denied by the Hopkins District Court on November 6, 1997.

On March 24, 1998, appellant filed a petition for a writ of mandamus in Hopkins Circuit Court. The writ was sought to compel the Hopkins District Court to make a determination on appellant's "Motion for Return of Property." The circuit court entered an order denying the petition on April 3, 1998, stating that the relief requested had been provided by the Hopkins District Court.

On February 10, 1999, appellant filed a "Motion for an Appealable Order" in Hopkins Circuit Court, in which he moved the court to issue an order from which he could take an appeal. On February 11, 1999, the court entered an order denying appellant's motion for an appealable order, from which this appeal follows.

Appellant's appeal is not timely under RCr 12.04(3), which, at the time of appellant's conviction in 1995, stated that an appeal must be taken within ten days after the date of entry of the judgment or order from which it is taken. Appellant pled guilty on November 16, 1995, and the property was ordered

forfeited as part of the plea agreement and sentence. This was a final order from which the record shows appellant did not timely appeal pursuant to RCr 12.04. Accordingly, this appeal is DISMISSED.

ALL CONCUR.

Entered: October 29, 1999

/s/ Wil Schroder
JUDGE, COURT OF APPEALS

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