

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-003124-MR

RICHARD KODE PURCELL

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 94-CR-00274

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON, KNOPF, AND MILLER, JUDGES.

MILLER, JUDGE: Richard Kode Purcell brings this *pro se* appeal from a December 7, 1999, order of the McCracken Circuit Court. We affirm.

In 1994, appellant suffered two indictments in the McCracken Circuit Court, being indictment number 94-CR-0202 and number 94-CR-0274. Both indictments involved multiple counts of theft by deception. They were substantial charges, each of which could culminate in a long prison sentence. It appears that at the time of the foregoing indictments, appellant was serving time in the penitentiary. In 1995, the two aforesaid indictments came

on for disposition. Appellant entered a plea agreement whereby he would receive a total of five years under each indictment to run concurrently. Evidently, there was a misunderstanding, and for a period of time, it was thought that the concurrent sentences also would run concurrently with the sentence appellant was then serving in the penitentiary. It is abundantly clear, however, that this misunderstanding was corrected at the time of the imposition of sentence. It was understood by the parties that the sentences imposed on indictment 94-CR-0202 and 94-CR-0274 would run concurrently with each other, but consecutive to the sentence appellant was then serving. The court made this eminently clear before accepting appellant's plea to the 1994 indictments.

Since the foregoing occurrence, appellant has repeatedly sought to have his sentence "modified." He first brought an appeal to this Court in 1995-CA-001257-MR arguing that his plea was involuntary. This argument was rejected and the appeal affirmed.

In 1999, appellant again challenged the validity of his sentence by filing a motion to correct an alleged "clerical error" in the circuit court's order. This motion was denied. No appeal was taken. On November 12, 1999, appellant filed the instant proceeding designed to correct his sentence pursuant to Ky. R. Civ. P. 60.02. Denial of this motion precipitated this appeal.

Throughout the history of this matter, appellant has sought to have his consolidated sentences on the 1994 indictments

run concurrently with a sentence he was then serving in the penitentiary. The instant proceeding is but a successive attempt to do so.

It is firmly established that successive attempts are not permitted. Matters already reviewed, or which could have been reviewed, cannot form a sufficient basis for subsequent motions. See Vunetich v. Commonwealth, Ky., 847 S.W.2d 51 (1990), Shepherd v. Commonwealth, Ky., 477 S.W.2d 798 (1972), Hampton v. Commonwealth, Ky., 454 S.W.2d 672 (1970).

For the foregoing reasons, the order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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