

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001264-MR
AND
NO. 2008-CA-002376-MR

JAMES W. STEADMAN

APPELLANT

v. APPEALS FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 00-CR-00126

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART AND VACATING IN PART

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; CAPERTON, JUDGE; WHITE,¹ SENIOR
JUDGE.

¹ Senior Judge Edwin M. White, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

CAPERTON, JUDGE: James W. Steadman directly appeals his convictions for theft by deception over \$300² and being a Persistent Felony Offender (PFO) in the Second Degree following a jury trial in Logan County. In addition, Steadman appeals the trial court's denial of his CR 60.02 motions. After a thorough review of the parties' arguments, the record, and the applicable law, we affirm Steadman's conviction, sentence, and the denial of his CR 60.02 motions. However, we find that the trial court acted outside of its jurisdiction by ordering restitution under KRS 532.033 more than ten days after entering Steadman's conviction and sentence. Accordingly we vacate the order of restitution.

The facts that give rise to this appeal stem from an auction conducted by Robert Blackford on April 8, 2000, wherein Steadman purchased fourteen items totaling \$29,175. Out of the fourteen items purchased at the auction most notable were a pickup truck for \$1,100, a Volvo truck and trailer for \$19,800 and a Ford 6600 tractor for \$6,250. Steadman paid for all items by check and left the auction with the goods. The check was then returned twice from Steadman's bank, Pioneer Bank, for insufficient funds.

Thereafter, Blackford tried numerous times to obtain payment from Steadman, all of which were unsuccessful. Steadman was subsequently indicted for theft by deception over \$300 and PFO first degree to which he pleaded not

² The felony amount at the time of Steadman's charges was \$300; in 2009 that amount was amended to \$500. KRS 514.040.

guilty. At the ensuing jury trial, Steadman represented himself, with assistance from an attorney with the Department of Public Advocacy.³

In addition to the aforementioned facts, at trial the jury was presented evidence concerning the auction, the titles to the purchased vehicles, the disposition of the vehicles, Steadman's history with Pioneer Bank, the amount of funds in his bank account in the months following the auction and Steadman's hospitalization following the auction. Specifically, the jury was presented with testimony from Blackford that the conditions of the auction were that all accounts had to be settled on the day of the sale; that titles would be released upon the checks clearing or payment of cash; and that Steadman took possession of the goods which he paid for with the bad check the day of the auction. Blackford further testified that after Steadman's check did not clear, Blackford had to receive a bank loan in order to pay the sellers for the items. Thereafter, the Volvo truck and trailer had their liens released on May 2, 2000.⁴

The jury was also presented evidence that Pioneer Bank had allowed Steadman to write checks and then wire in money to pay for it. In the months before the auction Steadman had transferred \$96,000 into his account and had paid off at least one large check for \$27,223.86 prior to the auction. However, there were never sufficient funds in Steadman's account to cover the check at issue post-auction.

³ The Department of Public Advocacy was not appointed to represent Steadman but was available at trial to assist him.

⁴ As to the tractor, it was conveyed by the sales receipt, which Blackford gave Steadman.

The jury was presented evidence that Steadman had a pattern of checks returned for insufficient funds. In March 2000, Steadman had three checks returned for insufficient funds; four checks were returned in April 2000; six checks returned in May 2000; three checks returned in June 2000; and eight checks returned in July 2000.

After being presented the aforementioned evidence, the jury convicted Steadman of theft by deception over \$300 and PFO in the Second Degree. Thereafter, the court sentenced Steadman to eight years and entered the final judgment on May 29, 2007. The court then entered a restitution order for \$11,917.50 pursuant to KRS 532.033 on June 13, 2007. Thereafter, Steadman filed two pro se CR 60.02 motions, which were denied by the trial court.

Steadman appeals from his conviction, sentence, imposition of restitution and also from the denial of his CR 60.02 motions. We shall first address Steadman's appeal concerning his conviction, the final judgment imposing his sentence, and the order of restitution; thereafter, we shall consider Steadman's appeal from the court's denial of his CR 60.02 motions.

As to Steadman's appeal concerning his conviction, the final judgment imposing his sentence, and the order of restitution, he presents three arguments. First, Steadman argues that the trial court erred by not granting his motion for a directed verdict. Second, Steadman argues that the trial court erred in allowing the Commonwealth to present a rebuttal expert witness, Al Thacker, without notice to the defense and without conducting a proper *Daubert* hearing

prior to Thacker's testimony. Third, Steadman argues that the trial court acted outside its jurisdiction when it ordered restitution.

The Commonwealth counter argues that the trial court properly denied Steadman's motion for directed verdict; did not abuse its discretion in allowing Thacker as a rebuttal witness; and that the trial court retained jurisdiction to have a restitution hearing and enter an order concerning restitution. With this in mind we turn to each of Steadman's arguments.

Steadman first argues that the trial court erred by not granting his motion for a directed verdict. In furtherance of this argument Steadman claims that there was insufficient proof that he intended to pass a bad check; that there is only a possibility that at the moment the check was given that he did not intend to pay for the goods and that this is insufficient evidence to sustain a verdict of guilty; that the evidence was all circumstantial and pointed to guilt as well as innocence; that he did not have the burden of persuasion;⁵ that his conviction was built upon numerous inferences; and lastly that his conviction violates his rights to Due Process because the Commonwealth failed to prove Steadman's intent beyond a reasonable doubt.

The Commonwealth believes that Steadman's alleged error concerning the denial of his directed verdict motion has been waived since at trial

⁵ We disagree that the evidence presented by the Commonwealth shifted the burden to Steadman to prove his innocence by a preponderance of the evidence. Steadman relies upon *Sandstrom v. Montana*, 442 U.S. 510, 99 S.Ct. 2450 (1979) for this assertion; however, in the case *sub judice* the jury instructions did not contain an improper presumption as in *Sandstrom*. Thus, Steadman's reliance on *Sandstrom* is misplaced.

Steadman did not argue to the court that there was insufficient evidence to convict him. Instead, Steadman argued to the court that Blackford did not have ownership of the items with liens attached at the time the check was passed and that at the time he passed the check he did not receive full value.

In reply, Steadman concedes that he told the trial court he was not arguing lack of intent to deceive, but was instead arguing that he did not receive full value; *i.e.*, that he withheld funds to cover the check because he was waiting for good title. Steadman contends that this argument to the trial court “clearly conveyed” the additional argument that it was not his intent to dishonor the check when he handed it to Blackford. Thus, Steadman argues that not only is this issue preserved for appeal, he was entitled to a directed verdict because some of the items at auction had liens on them that had to be removed; therefore, Blackford did not hold clear, unencumbered title to the Volvo truck and trailer.⁶ In addition, Steadman argues that there were issues with the Volvo truck’s vehicle identification number (VIN).

Steadman relies upon *Lanham v. Commonwealth*, 171 S.W.3d 14 (Ky. 2005), for his argument that his alleged error is preserved as his request for a directed verdict clearly conveyed the argument that the evidence was insufficient. We find Steadman’s argument disingenuous since Steadman informed the trial court he was not taking the position that at the time he passed the check he had no

⁶ No explanation was given why Steadman did not pay for the items of which he did not contest title.

intention to deceive. Steadman presented one issue for directed verdict to the trial court and expressly denied the argument he now presents on appeal.

It has long been this Court's policy that novel arguments will not be considered for the first time on appeal and we shall not now entertain a change in policy. *See Shelton v. Commonwealth*, 992 S.W.2d 849, 852 (Ky.App. 1998) (“[a]n appellate court will not consider a theory unless it has been raised before the trial court and that court has been given an opportunity to consider the merits of the theory.”).

Moreover, in *Potts v. Commonwealth*, 172 S.W.3d 345 (Ky.2005), the Kentucky Supreme Court held:

CR 50.01 states, in pertinent part, “[a] motion for a directed verdict shall state the specific grounds therefor.” We have previously applied CR 50.01 to criminal cases and have held that its requirement of “specific grounds” must be followed to preserve for appellate review a denial of a motion for a directed verdict of acquittal.

Potts at 348.

Thus, Steadman's argument concerning the insufficiency of the evidence is unpreserved.⁷ Steadman essentially asserts that his unpreserved error be reviewed under RCr 10.26 by arguing that under *Schoenbachler v. Commonwealth*, 95 S.W.3d 830 (Ky.2003), his conviction is a violation of federal

⁷ While we recognize that the *pro se* pleadings are not to be held to the same standard as those of an attorney, (*See Case v. Commonwealth*, 467 S.W.2d 367, 368 (Ky. 1971)), issues raised upon appeal still must be preserved. Moreover, Kentucky courts still require *pro se* litigants to follow the Kentucky Rules of Civil Procedure. *Watkins v. Fannin*, 278 S.W.3d 637, 642 (Ky.App. 2009). Therefore, Steadman was required to preserve this issue for appeal by stating his grounds for a directed verdict to the trial court.

Due Process. Accordingly, we shall review this claimed error under RCr 10.26, which states:

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

“Manifest injustice” requires that substantial rights of the defendant were prejudiced by the error; *i.e.*, there is a substantial possibility that the result of the trial would have been different. *Schaefer v. Commonwealth*, 622 S.W.2d 218 (Ky. 1981) and *Jackson v. Commonwealth*, 717 S.W.2d 511 (Ky.App. 1986).

Further refining the parameters of RCr 10.26, the Kentucky Supreme Court in *Brewer v. Commonwealth*, 206 S.W.3d 343 (Ky. 2006), undertook an analysis of what constitutes a palpable error.

For an error to be palpable, it must be easily perceptible, plain, obvious and readily noticeable. A palpable error must involve prejudice more egregious than that occurring in reversible error. A palpable error must be so grave in nature that if it were uncorrected, it would seriously affect the fairness of the proceedings. Thus, what a palpable error analysis “boils down to” is whether the reviewing court believes there is a “substantial possibility” that the result in the case would have been different without the error. If not, the error cannot be palpable.

Id. at 349.

Steadman’s argument under *Schoenbachler v. Commonwealth*, 95 S.W.3d 830 (Ky. 2003), that his conviction on less than full proof of the element of

intent is per se a manifest injustice and a violation of federal Due Process thereby entitling him to relief under RCr 10.26, was previously rejected by the Kentucky Supreme Court in *Potts, supra*. In *Potts*, the Court held that:

Appellant interprets dictum in *Schoenbachler v. Commonwealth*, 95 S.W.3d 830 (Ky. 2003), to mean that a failure by the Commonwealth to present sufficient evidence to support a criminal conviction *always* constitutes palpable error. *Id.* at 836-37.... Our cases, however, are replete with affirmances of convictions where unpreserved errors pertained to the Commonwealth's failure to prove an element of the offense....Appellant's interpretation of *Schoenbachler* not only runs contrary to each of these decisions, but also would essentially eliminate the well-established requirement that a party properly preserve a claim of insufficiency of evidence by informing the trial court of the relief requested and the reasons therefor. We therefore disagree with Appellant's interpretation of *Schoenbachler*.

Potts at 348.

The standard for addressing Steadman's claimed violation of Due

Process was also addressed by the Court in *Potts*, which held therein:

In *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), the United States Supreme Court articulated the standard of review required by the Due Process Clause with respect to the sufficiency of evidence to support a criminal conviction, holding that "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 318-19, 99 S.Ct. at 2788-89.

Potts at 349.

Steadman argues that there was an issue with the title and VIN number of the Volvo truck, that he did not receive full value, and that he did not intend to dishonor the check at the moment it was passed. Nevertheless, the jury was also presented evidence from which they could determine that Steadman did intend to dishonor the check the moment it was passed. The Commonwealth presented ample evidence concerning Steadman's bank account, the values of the items taken from the auction and Steadman's disposition of the items. Any title issues argued by Steadman only affected part of the items taken at auction, as there were certainly items taken from the auction over \$300 that did not require a title for ownership.⁸ Thus, in light of the evidence presented to the jury and viewed in the light most favorable to the Commonwealth, any rational trier of fact could have found the essential elements of the theft by deception over \$300 and PFO Second Degree beyond a reasonable doubt. Thus, Steadman's argument for violation of Due Process must fail. Likewise, Steadman is not entitled to relief under RCr 10.26 as no manifest injustice has resulted.

Even if we were to assume, *arguendo*, that Steadman's alleged error concerning insufficiency of the evidence was preserved by his motion for directed verdict, Steadman would still not be entitled to relief. In *Commonwealth v.*

Benham, 816 S.W.2d 186 (Ky. 1991), the Kentucky Supreme Court stated:

On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient

⁸ As previously noted, no explanation was offered by Steadman why he did pay for the items to which he did not contest title.

to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony.

On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal. *Commonwealth v. Sawhill*, 660 S.W.2d 3 (Ky.1983).

Benham at 187.

The Commonwealth presented sufficient evidence through the testimony of its witnesses to establish the proper mens rea based on the circumstances. “Intent can be inferred from the actions of an accused and the surrounding circumstances.” *Anastasi v. Commonwealth*, 754 S.W.2d 860, 862 (Ky. 1988). *See also Caudill v. Commonwealth*, 256 S.W.2d 8 (Ky. 1953) (Scienter may be established by the circumstances) and *Dawes v. Commonwealth*, 349 S.W.2d 191 (Ky. 1960) (Evidence of state of mind can be either direct or circumstantial). Further, the jury has wide latitude in inferring intent from the evidence. *Rayburn v. Commonwealth*, 476 S.W.2d 187 (Ky. 1972).

Moreover, it has long been the law in Kentucky that a conviction may rest upon circumstantial evidence. *See Newton v. Commonwealth*, 2 S.W.2d 661 (Ky. 1928). Sufficient circumstantial evidence is such evidence from which the judge can conclude that reasonable minds might fairly find guilt beyond a reasonable doubt based on the totality of the evidence. *Hodges v. Commonwealth*,

473 S.W.2d 811, 812-813 (Ky. 1971). Thus, Steadman's argument that the evidence was circumstantial and thereby insufficient to prove his guilt or intent must fail. In light of the evidence presented to the jury, Steadman was not entitled to a directed verdict of acquittal as the jury could reasonably find him guilty. We affirm the trial court as it properly denied Steadman's motion for a directed verdict.

We now turn to Steadman's second argument, that the trial court erred in allowing the Commonwealth a rebuttal expert witness, Al Thacker, without notice to the defense and without conducting a proper *Daubert* hearing prior to Thacker's testimony. We shall first address the alleged rebuttal error and then whether the trial court erred in not conducting a *Daubert* hearing.

At trial the Commonwealth called Al Thacker, a rebuttal witness. Thacker testified that he had been working on trucks for a living since 1994 and had worked on trucks on his farm for another ten years before that. Steadman objected to the relevancy of Thacker's testimony. In response, the Commonwealth informed the court that Thacker was familiar with trucks, their VINs, and could testify that the truck in question at trial was indeed a Volvo truck.⁹ Steadman then objected to Thacker's testimony as hearsay, which was overruled by the trial court.

⁹ Steadman claimed at trial that the title to the Volvo truck purchased at auction was invalid on its face because it named the wrong manufacturer. At trial there was conflicting evidence as to whether the truck had a VIN or had received a new VIN. Additionally, there was evidence that the title was for a White-GMC truck. Thacker testified that White, GMC, and Volvo were the same manufacturer.

Steadman argues that the trial court abused its discretion in permitting a rebuttal witness that was withheld from the defense since Steadman specifically requested during discovery to be informed of any expert witness or reports that the Commonwealth intended to produce. Steadman argues that the Commonwealth is prohibited from holding back evidence and then using it to “sandbag” a defendant on rebuttal. Additionally, Steadman argues that Thacker introduced new evidence as to the history of truck mergers while explaining the White-Volvo-GMC relationship and the art of reading VIN numbers for parts.

The Commonwealth responds that this error is unpreserved as this argument was never presented to the trial court, nor is this the type of error that qualifies as manifest injustice under RCr 10.26. Moreover, the Commonwealth argues that the admission of Thacker’s testimony was not an abuse of discretion because the defense presented the testimony of Herman England, Jr. England testified that the title given to Blackford at the auction was for his White-Volvo even though the title said White-GMC because GM owned White-Volvo and titles sometimes said White-GMC. The Commonwealth asserts that they only presented Thacker to clarify England’s testimony.

As held in *Pilon v. Commonwealth*, 544 S.W.2d 228, 231(Ky. 1976), “The trial court is afforded a great degree of discretion in determining when rebuttal evidence will be received. RCr 9.42. Where there is no clear showing of arbitrariness or an abuse of discretion, the ruling of the trial court will not be disturbed.” RCr 9.42 further grants the trial court the discretion to allow evidence-

in-chief presented during the rebuttal stage. *See also Davis v. Commonwealth*, 795 S.W.2d 942 (Ky. 1990). Thus, we review the trial court's admission of rebuttal evidence under an abuse of discretion standard. "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

After a review of the record and the parties' arguments, we conclude that any error, if at all, in allowing Thacker to testify was harmless given the testimony of England. Thus, the absence of Thacker's testimony would not have changed the outcome of trial and therefore error did not affect the substantial rights of Steadman. Under RCr 9.24, a harmless error is not grounds for reversal. *See also Bratcher v. Commonwealth*, 151 S.W.3d 332 (Ky. 2004).

We now turn to whether the trial court erred by failing to conduct a *Daubert* hearing. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). Steadman argues that the trial court erred by failing to conduct a *sua sponte Daubert* hearing. At trial, Steadman did not request a *Daubert* hearing for Thacker. Instead, Steadman objected to the foundation¹⁰ for Thacker's testimony and then objected to hearsay. The trial court overruled both objections. Steadman now argues on appeal that his objections were effectively a *Daubert* challenge and that the trial court should have undertaken the hearing. The Commonwealth disagrees and argues that this error is

¹⁰ Thacker testified that he had been working with trucks for at least 13 years.

unpreserved. Alternatively, the Commonwealth asserts that even if the alleged error were preserved the trial court did not abuse its discretion, as Thacker was qualified as an expert given that Thacker had been working with trucks for thirteen years.

We agree with the Commonwealth that Steadman is not entitled to relief for this alleged error. While under *Daubert* the trial court functions as a gatekeeper, charged with keeping out unreliable and pseudoscientific evidence, our courts have repeatedly held that the trial court is not required to *sua sponte* conduct a *Daubert* hearing. See *R.T. Vanderbilt Co., Inc. v. Franklin*, 290 S.W.3d 654 (Ky.App. 2009); *Tharp v. Commonwealth*, 40 S.W.3d 356 (Ky. 2000); *Ferry v. Commonwealth*, 234 S.W.3d 358 (Ky.App. 2007); and *Clay v. Commonwealth*, 291 S.W.3d 210 (Ky. 2008). As such, Steadman is not entitled to relief from his unpreserved alleged error.

We now turn to Steadman's third alleged error that the trial court acted outside its jurisdiction when it ordered restitution.

Steadman was sentenced by the trial court to eight years and the final judgment was entered on May 29, 2007.¹¹ Thereafter, the court held a restitution hearing on June 8, 2007, and entered a restitution order for \$11,917.50 pursuant to KRS 532.033 on June 13, 2007. Steadman now argues that the trial court was without jurisdiction to enter such an order. The Commonwealth argues that

¹¹ The "Final Judgment Sentence of Imprisonment" made no reference to restitution and specifically advised defendant that any appeal therefrom must be taken within thirty days of its entry.

because Steadman agreed to a restitution hearing after his final sentencing, then his argument that the trial court was without jurisdiction to order restitution is waived.

Contrary to the Commonwealth's assertion, Steadman did not waive this error because the issue is one of jurisdiction of the trial court. We have previously held that "[s]ubject matter jurisdiction may be raised at any time and cannot be consented to, agreed to, or waived by the parties." *Gaither v. Commonwealth*, 963 S.W.2d 621, 622 (Ky. 1997). Generally, a trial court loses jurisdiction over a defendant's case ten days after the entry of a final judgment. *Silverburg v. Commonwealth*, 587 S.W.2d 241, 244 (Ky. 1979) and CR 59.05. Jurisdiction can only be extended by rule or statute. *Rollins v. Commonwealth*, 294 S.W.3d 463, 466 (Ky.App. 2009). As held in *Rollins*, restitution is statutorily based:

Indeed, a trial court's authority to order a defendant into court for the purpose of restitution is strictly statutory. KRS 431.200; KRS 532.032, et seq. As there is no applicable statute which would have extended jurisdiction to the court in this circumstance, it was acting without jurisdiction. As KRS 431.200 is the only statute dealing with post-sentencing orders of restitution, its mandates must be met in order for the trial court to have jurisdiction.

Rollins at 466.

In the case *sub judice*, the trial court did not order restitution under KRS 431.200 which permits post-sentencing orders of restitution, but under KRS 532.032 and KRS 532.033. Unfortunately, the trial court was divested of jurisdiction ten days after entry of the final judgment imposing sentencing. As

such, the trial court was without jurisdiction to enter restitution more than ten days after entry of the final judgment. Consequently, we are compelled to vacate the order of restitution.

We now turn to Steadman's claimed errors concerning the denial of his multiple¹² CR 60.02 motions.¹³ As previously noted, Steadman argues that the trial court committed error in failing to hold an evidentiary hearing on the CR 60.02 motion to vacate the conviction and sentence based upon the Commonwealth's failure to disclose exculpatory evidence and that Steadman was denied due process of law by the failure of the Commonwealth to disclose exculpatory evidence.

The Commonwealth argues that the trial court properly denied Steadman's CR 60.02 motions without an evidentiary hearing as Steadman offered only vague allegations and no actual proof of exculpatory evidence. The Commonwealth additionally argues that Steadman's notice of appeal was untimely filed and thus, his appeal concerning the denial of his CR 60.02 motions is not properly before this Court. We agree with the Commonwealth that Steadman's notice of appeal was untimely filed and such is dispositive of the issues brought forth by Steadman's CR 60.02 motions.

¹² We note that under *Gross v. Commonwealth*, 648 S.W.2d 853 (Ky. 1983), successive post-conviction motions are prohibited.

¹³ Steadman filed one CR 60.02 motion asking the court to vacate his order of restitution and one CR 60.02 motion asking the court to vacate his sentence.

On July, 22, 2008, the court entered an order denying Steadman's CR 60.02 motions. Thirteen¹⁴ days later on August 4, 2008, Steadman filed an untimely motion for reconsideration. CR 59.05 only permits such motions to be filed within ten days of the entry of the final judgment; thereafter, the trial court loses jurisdiction to proceed with a case. *See Commonwealth v. Gaddie*, 239 S.W.3d 59, 62 (Ky. 2007).

The trial court's ruling on October 6, 2008, on Steadman's motion for reconsideration was a nullity as it had already lost jurisdiction. Thus, Steadman's time for appeal commenced on entry of the final judgment and not on the trial court's ruling of October 6, 2008. Thus, the notice of appeal filed on December 18, 2008, was untimely and the appeal from the trial court's ruling on the CR 60.02 motions is not properly before this Court.¹⁵ *See* RCr 12.04 and CR 73.02. Accordingly, we dismiss Steadman's appeal concerning the denial of his CR 60.02 motions.

In light of the aforementioned analysis, we hereby affirm Steadman's conviction and sentence, vacate the order of restitution, and dismiss Steadman's appeal of the denial of his CR 60.02 motions.

ALL CONCUR.

¹⁴ The time limit in CR 59.05 is not expanded by CR 6.05, the "mail rule". *See Arnett v. Kennard*, 580 S.W.2d 495, 496 (Ky. 1979).

¹⁵ Steadman's motion to proceed in forma pauperis was denied by the trial court on December 11, 2008.

BRIEFS FOR APPELLANT:

Susan Jackson Balliet
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Todd. D. Ferguson
Assistant Attorney General
Frankfort, Kentucky