

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001219-MR

RAYMOND ANDERSON JR.

APPELLANT

v.

APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 06-CR-00027

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: VANMETER, ACTING CHIEF JUDGE; COMBS AND KELLER,
JUDGES.

VANMETER, ACTING CHIEF JUDGE: Raymond Anderson Jr. appeals *pro se*
from an order entered by the Henderson Circuit Court denying his motion seeking
modification, amendment or clarification of his sentence pursuant to CR¹ 60.01 or
CR 60.02. For the reasons stated, we affirm.

¹ Kentucky Rules of Civil Procedure.

In June 2006, a jury found Anderson guilty of possession of a firearm by a convicted felon and of being a first-degree persistent felony offender (PFO). He was sentenced to twenty-years' imprisonment, and in 2009 his conviction was affirmed by the Kentucky Supreme Court.²

Meanwhile, Anderson was placed in the custody of the Department of Corrections (Department). In March 2007, he sought an internal administrative review of the calculation of his parole eligibility. He alleged that the Department had mistakenly classified, as a Class C felony rather than a Class D felony, his conviction on the charge of possession of a firearm by a convicted felon. The Department rejected Anderson's plea, stating:

The judgment on indictment #06CR00027 does not specify if the charge of Possession of a Firearm is a class C or D felony. Since the firearm you possessed was a handgun, and statute indicates a handgun is a Class C Felony, your sentence was calculated accordingly.

Anderson then filed a motion pursuant to CR 60.01 and CR 60.02, seeking modification, amendment or clarification of the underlying judgment to correct a clerical error. More specifically, he requested that the judgment be clarified to reflect that he was convicted of the Class D felony of possession of a firearm by a convicted felon, rather than the Class C felony of possession of a handgun by a convicted felon. The circuit court denied the motion, and this appeal followed.

² *Anderson v. Commonwealth*, 281 S.W.3d 761 (Ky. 2009).

KRS³ 527.040(2) provides that “[p]ossession of a firearm by a convicted felon is a Class D felony unless the firearm possessed is a handgun in which case it is a Class C felony.” A person who is convicted of a Class C or D felony, and who is found to be a first-degree PFO, shall be sentenced to an indeterminate term of ten- to twenty-years’ imprisonment. KRS 532.080(6)(b). However, the distinction between Class C and Class D felonies is critical to a first-degree PFO such as Anderson since KRS 532.080(7) provides that a first-degree PFO is eligible for shock probation, probation or conditional discharge only if the PFO’s felony convictions are for Class D felony offenses. A first-degree PFO convicted of a Class A, B or C felony, by contrast, may not be considered for parole until serving at least ten years in prison. *Id.*

Here, it appears from the record that the jury found Anderson guilty of possession of a firearm by a convicted felon, specifically rejecting the option of finding that the firearm was a handgun. Consistent with the jury’s verdict, the court’s judgment found Anderson “guilty of the offense of Possession of a Firearm by a Convicted Felon” and of being a first-degree PFO. The term “handgun” was not used in the judgment. In denying Anderson’s motion for CR 60.01 or CR 60.02 relief, the court reiterated that Anderson was found guilty of possession of a firearm by a convicted felon, and that “[p]ossession of a Firearm by a Convicted Felon[] is a Class D felony.” The court further stated:

Review of the court record shows that the
judgment of conviction and sentence accurately reflects

³ Kentucky Revised Statutes.

the verdict and recommendation of the jury. The judgment does not need to be corrected. As to how the Department of Corrections interprets the judgment, that matter will need to be pursued with the Department directly.

Because the court's conclusion that Anderson was found guilty of a Class D felony was consistent with the underlying judgment, the trial court did not err by denying Anderson's motion for relief on the ground that the judgment did not need correction. However, Anderson might be well advised to consider some other route of seeking the desired relief, such as by filing a petition for a declaration of rights against the Department. *See* KRS 418.040; *Polsgrove v. Kentucky Bureau of Corrs.*, 559 S.W.2d 736 (Ky. 1977).

The order of the Henderson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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