

RENDERED: MAY 14, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000388-MR

ROSCOE DEES, JR.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 98-CR-00327

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

NICKELL, JUDGE: Roscoe Dees, Jr., *pro se*, appeals from an order of the Fayette

Circuit Court denying his **sixth** CR² 60.02 motion. Dees claims his underlying

charge, possession of drug paraphernalia, second offense, was not subject to

¹ Judge William L. Knopf concurred in this opinion prior to the expiration of his term of Senior Judge service on May 7, 2010. Release of this opinion was delayed by administrative handling.

² Kentucky Rules of Civil Procedure.

enhancement under the persistent felony offender statute and therefore the judgment must be set aside. We disagree and affirm.

In June of 1998, Dees pled guilty to possession of drug paraphernalia (second offense)³ and being a persistent felony offender in the first degree.⁴ A third charge, possession of a controlled substance in the first degree,⁵ was dismissed. Dees was sentenced to twenty years' imprisonment, conditionally probated for five years. While this sentence exceeded the Commonwealth's recommendation, when given the opportunity to withdraw his guilty plea, Dees persisted in pleading guilty. In October of 1998, his probation was revoked and he was ordered to serve the previously imposed sentence of twenty years.

In January of 1999, Dees filed his first motion to vacate alleging "the statute under which he was sentenced was later amended to prohibit the enhancement of the Possession of Drug Paraphernalia charge to Persistent Felony Offender status." That motion was summarily denied in February of 1999. Subsequent motions to vacate under CR 60.02(f), alleging the same constitutional violation, were denied on May 18, 1999; November 6, 2000; November 21, 2000; March 31, 2003; and February 23, 2009. In the midst of filing a flurry of CR 60.02 motions, Dees also filed an RCr⁶ 11.42 motion alleging ineffectiveness of counsel

³ KRS 218A.500, a Class D felony.

⁴ KRS 532.080.

⁵ KRS 218A.1415, a Class D felony.

⁶ Kentucky Rules of Criminal Procedure.

emanating from the PFO enhancement. That motion was denied on August 1, 2003.

In *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996), we held “actions under CR 60.02 are addressed to the ‘sound discretion of the court and the exercise of that discretion will not be disturbed on appeal except for abuse.’ *Richardson v. Brunner*, 327 S.W.2d 572, 574 (Ky. 1959). Rule 60.02(f) ‘may be invoked only under the most unusual circumstances. . . .’ *Howard v. Commonwealth*, 364 S.W.2d 809, 810 (Ky. 1963).” In reviewing the record on appeal we discern no abuse of discretion by the trial court. Indeed, the trial court’s ruling is wholly consistent with prior rulings from the Supreme Court of Kentucky⁷ and from this Court.⁸

Because of the inordinate amount of time already devoted to Dees’ appeals, we will not engage in a lengthy recitation of facts or legal analysis. At this point, more than a decade after entry of judgment and multiple denials of the same allegations of error, it is sufficient to say Dees’ arguments, which offer nothing new or different, are without merit and were properly denied by the trial court. Therefore, the order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

⁷ *Roscoe Dees, Jr. v. Commonwealth*, 99-SC-0056-T (rendered December 6, 1999, unpublished); *Roscoe Dees, Jr. v. Commonwealth*, 1999-SC-0683-TG (rendered August 24, 2000, unpublished).

⁸ *Roscoe Dees, Jr. v. Commonwealth*, 2001-CA-000228-MR (rendered March 29, 2002, unpublished); *Roscoe Dees v. Commonwealth*, 2003-CA-001737-MR (rendered November 12, 2004, unpublished) (addressing denial of RCr 11.42 motion).

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