

RENDERED: DECEMBER 3, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001253-MR

LESLIE ALLEN SMITH

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 73-CR-14771

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: FORMTEXT TAYLOR, CHIEF JUDGE; STUMBO, JUDGE;
SHAKE, SENIOR JUDGE.

TAYLOR, CHIEF JUDGE: Leslie Allen Smith brings this *pro se* appeal from a
June 17, 2009, order of the Warren Circuit Court denying appellant's motion to
dismiss. We affirm.

In 1973, appellant pleaded guilty to the offense of dwelling house
breaking and was sentenced to three-years' imprisonment. Appellant did not

completely serve his sentence of imprisonment and was eventually imprisoned in another state on unrelated charges.

In 2003, some thirty years later, appellant filed a motion in the Warren Circuit Court to vacate or dismiss the judgment sentencing him to three-years' imprisonment upon the guilty plea to dwelling house breaking. In support thereof, appellant contended that an agreement existed between himself and the Commonwealth to "dismiss" his judgment in exchange for his cooperation with police. Appellant alleged that he performed pursuant to the terms of the agreement but the Commonwealth failed to do so. That motion was denied. In December 2004, appellant filed another motion to dismiss upon the same grounds. By order entered June 17, 2009, the circuit court denied appellant's motion. This appeal follows.

Appellant contends that the circuit court erred by denying his motion to dismiss the judgment upon guilty plea to dwelling house breaking. We disagree.

To begin, we assume that appellant's motion to dismiss was brought pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. We review the circuit court's denial of CR 60.02 relief for abuse of discretion. *Brown v. Com.*, 932 S.W.2d 359 (Ky.1996).

In its order denying appellant relief, the circuit court specifically concluded that "the record does not reflect any proof that an agreement or 'deal' was made by the previous Commonwealth Attorney, Morris Lowe, or with the current Commonwealth Attorney, Christopher Cohron." We cannot say the circuit

court abused its discretion by so concluding. We have reviewed the entire circuit court record and found no evidence of any such “agreement” with the Commonwealth. However, the record does reveal that appellant filed previous motions seeking relief upon the same grounds and that the motions were repeatedly denied by the circuit court.

Appellant also alleges that the present Commonwealth Attorney, Christopher Cohron, failed to abide by the terms of another plea agreement. Under the alleged terms of this agreement, appellant contends that the Commonwealth allegedly promised to amend the “original conviction and plea” upon the offense of dwelling house breaking to theft by unlawful taking but failed to do so. Again, the record does not support appellant’s allegation. Rather, it appears that appellant and his counsel were attempting to reach an agreement with the Commonwealth but negotiations were unsuccessful. As such, we view appellant’s allegation to be without merit.

In sum, we are of the opinion that the circuit court did not abuse its discretion by denying appellant’s motion to dismiss under CR 60.02.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Leslie Allen Smith, *Pro Se*
Butner, North Carolina

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Todd D. Ferguson
Assistant Attorney General
Frankfort, Kentucky