

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-001896-MR

WALTER RAY DIXON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE A.C. MCKAY CHAUVIN, JUDGE  
ACTION NOS. 03-CR-002039, 03-CR-002039-002 AND 04-CR-001097

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, MOORE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Walter Ray Dixon<sup>1</sup> brings this *pro se* appeal from an order of the Jefferson Circuit Court summarily denying Dixon's motion pursuant to Kentucky Rules of Criminal Procedure (RCr) 10.26. Because RCr 10.26 does not provide an independent procedure to seek post-judgment relief, we affirm.

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<sup>1</sup> Walter Ray Dixon is unrelated to Kentucky Court of Appeals Judge Donna L. Dixon.

Tommy Wells reported to the Louisville Metro Police that he had been struck several times in the head with a brick and robbed. Wells and/or his friend Jason Gilbert described the perpetrators as a black man and a white man, who were friends of a white woman who Wells met earlier that evening.

Weeks later, Gilbert believed he saw the black perpetrator at a bar and was informed by the bar's employees that the man was Dixon. Gilbert relayed this information to the police, who presented a photopak to Wells. Wells identified Dixon as the black assailant, and in a subsequent photopak, identified Stephanie Dile, who lived with Dixon, as his female friend.

Dixon was indicted for first-degree robbery and complicity. Dixon was found guilty of first-degree robbery, which carried a possible punishment ranging from ten to twenty-years' imprisonment. Because Dixon also faced a charge of being a second-degree persistent felony offender (PFO), he was subject to an enhanced sentence. However, before the PFO phase, the Commonwealth agreed to recommend a sentence of twenty-five years in exchange for Dixon's guilty plea. Thereafter, the trial court accepted Dixon's guilty plea and entered a judgment sentencing him to twenty-years' imprisonment, enhanced to twenty-five years by the PFO charge.

Dixon's first post-conviction motion was filed pursuant to CR 60.02, alleging prosecutorial misconduct, insufficient evidence, and ineffective assistance

of counsel but was later converted to an RCr 11.42 motion. The Jefferson Circuit Court summarily denied the motion and this Court affirmed.

Dixon filed a second CR 60.02 motion alleging that he was innocent and that it would be a manifest injustice to permit his conviction. The motion was summarily denied and Dixon did not appeal. However, he filed a CR 59.05 motion that was denied. He did not appeal.

The present motion entitled “Motion to Preserve Palpable Error Pursuant to RCr 10.26” alleges that Dixon’s plea violated equal protection, his waiver of his right to appeal was not voluntary, and that his plea was involuntary under the totality of the circumstances.

We agree with the circuit court that Dixon’s motion is without merit and, therefore, affirm. RCr 10.26, known as the palpable error rule, provides that “[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.”

In *Stoker v. Commonwealth*, 289 S.W.3d 592, 598 (Ky.App. 2009), the Court explained the purpose of the rule as follows: “RCr 10.26 is a *standard of review* for either the trial court, on a motion for new trial, or the appellate court, when reviewing an appeal from a final judgment, because of a palpable error *during trial* that resulted in manifest injustice.” (emphasis added). The rule does not provide a procedural mechanism for an independent motion.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Walter Ray Dixon, *Pro se*  
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BRIEF FOR APPELLEE:

Jack Conway  
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