

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-000839-MR

EARL W. HUNT

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT  
HONORABLE TIMOTHY C. STARK, JUDGE  
ACTION NO. 12-CR-00146

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, D. LAMBERT AND TAYLOR, JUDGES.

COMBS, JUDGE: Earl Hunt appeals the order of the Graves Circuit Court which denied his motion for relief filed pursuant to Kentucky Rule[s] of Civil Procedure (CR) 60.02. After our review, we affirm.

On January 7, 2013, Hunt pleaded guilty to two counts of sexual abuse in the first degree. He received a sentence of six-years' incarceration. On April 14,

2014, Hunt filed a motion to amend his sentence pursuant to CR 60.02. The trial court denied the motion on April 30, 2014. This appeal follows.

Cr 60.02 is a vehicle for extraordinary post-conviction relief. “It is for relief that is not available by direct appeal and not available under RCr [Kentucky Rule[s] of Criminal Procedure] 11.42.” *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). We may not disturb a ruling by the trial court in the absence of an abuse of discretion. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000). A court abuses its discretion by acting arbitrarily, unreasonably, unfairly, or in a manner “unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

On appeal, Hunt’s arguments relate to Kentucky Revised Statute[s] (KRS) 532.043(1), which provides that persons convicted of certain sex crimes will be subject to post-incarceration supervision for five years. There is no dispute that Hunt’s conviction is one of the qualifying crimes.

Hunt contends that KRS 532.043(1) is unconstitutional. He also argues that he is exempt from its application because the trial court did not check a particular box in its order of judgment and sentence.

In its order denying Hunt’s CR 60.02 motion, the trial court declined to address the constitutionality of KRS 532.043(1). It reasoned that the courts had already found the statute to be constitutional and that Hunt had not provided the Attorney General with notice of his argument. Neither the trial court nor the Commonwealth has cited the particular case which held that the statute is

constitutional, and we are unable to find one. Nonetheless, we agree that review is precluded due to lack of notice to the Attorney General.

According to KRS 418.075(2), when an appellant argues that a law is unconstitutional, he must serve the Attorney General with notice of the challenge prior to filing his brief. Our courts have incorporated the requirement into our rules. CR 24.03 provides that the Attorney General must be given the opportunity to intervene in cases which challenge the constitutionality of a law. We may not address a constitutionality challenge in the absence of strict compliance with the statute and the civil rule. *Benet v. Commonwealth*, 253 S.W.3d 528, 532 (Ky. 2008). In this case, nothing in the record indicates that Hunt attempted to provide the Attorney General with notice of his challenge to the constitutionality of KRS 532.043(1). Therefore, we are unable to examine it.

Hunt also argues that his sentence was impermissibly changed to include post-conviction supervision. The trial court used a standard form when it sentenced Hunt. The form includes a blank for a checkmark if the sentence includes conditional discharge. However, Hunt is not subject to conditional discharge; rather he is subject to post-incarceration supervision.

Nonetheless, it was unnecessary for the trial court to make any reference to the post-incarceration supervision in its judgment. When a sentence is prescribed by statute, “the omission of any mention of the statute or of its requirements in the court’s written judgment is not erroneous. [Appellant] is bound by its provisions.” *Jones v. Commonwealth*, 200 S.W.3d 495, 497 (Ky. App. 2006).

Additionally, Hunt appears to argue that KRS 532.043 does not apply to him because of amendments made by the General Assembly. However, as he details in his brief, the statute was amended in 2011. His conviction and sentencing occurred in 2013. Therefore, because Hunt was subject to the current version, his argument has no merit.

Finally, Hunt appears to make an argument that post-incarceration supervision renders him liable for reentry to prison at the discretion of the parole board – regardless of whether he committed a new felony offense. However, KRS 532.043 does not indicate that Hunt could be immediately incarcerated a second time after completion of his sentence. Nothing in the record suggests that he will be. This argument is completely speculative; there is no validity to his claim of error in this respect.

We affirm the order of the Graves Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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