

RENDERED: June 19, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-1270-MR

GARLAND DEAN

APPELLANT

v. APPEAL FROM BRECKINRIDGE CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, SPECIAL JUDGE
ACTION NO. 89-CR-00039

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

* * * * *

BEFORE: GUIDUGLI, KNOX, and MILLER, JUDGES.

MILLER, JUDGE. Garland Dean (Dean) brings this pro se appeal from an order of the Breckinridge Circuit Court entered on April 18, 1997, denying in part and granting in part his motion to alter, amend, or vacate sentence brought pursuant to Ky. R. Crim. Proc. (RCr) 11.42 and Ky R. Civ. Proc. (CR) 60.02. Finding no error by the trial court, we affirm.

In April 1990, Dean pled guilty to one count of murder (Ky. Rev. Stat. (KRS) 507.020) and one count of attempted murder (KRS 506.010) involving the shooting death of his former girlfriend and the shooting of another person. Although the

record indicates the guilty plea was entered pursuant to a plea agreement, the Commonwealth made no recommendation as to sentencing. On May 9, 1990, Dean appeared with counsel for sentencing. At that time, the trial court sentenced him to fifteen years on the attempted murder offense and on the murder offense "to the Department of Corrections for and during the remainder of his natural life." The court ordered the sentences to run consecutively.

In January 1997, Dean filed a motion to amend or vacate his sentence pursuant to RCr 11.42 and CR 60.02, and requested an evidentiary hearing. In the motion, he raised three issues: 1) defense counsel was ineffective; 2) the judgment was void because the trial court sentenced him to imprisonment for "natural life" for murder; and, 3) the trial court improperly ordered the attempted murder and murder sentences to run consecutively. In April 1997, Special Judge Thomas Castlen summarily denied the motion as to the first two issues, but granted the motion as to the third by ordering the sentences to run concurrently. On April 29, 1997, Dean filed a motion to reconsider¹ again challenging the judgment of sentence for "natural life." On May 12, 1997, the circuit court denied the motion to reconsider and this appeal followed.

¹The Kentucky Rules of Civil Procedure (CR) do not provide for a motion to reconsider, however, such a motion may be treated as a motion to alter, amend or vacate under CR 59.05. See Commonwealth v. Newsome, Ky., 296 S.W.2d 703 (1956).

The only issue on appeal involves the validity of the sentence imposed upon the murder offense. Dean argues that the judgment of conviction is void ab initio because it states he is guilty of murder and "is sentenced to the Department of Corrections for and during the remainder of his natural life." Dean contends that this sentence violates KRS 532.030(1), which authorizes four possible sentences for a capital offense: death, a term of imprisonment for life without probation or parole for twenty-five years, life, or a term of not less than twenty years. Dean interprets the sentence for "natural life" as being an illegal sentence because it is outside the alternatives designated in KRS 532.030 and precludes the possibility of parole. We disagree.

While the portion of the judgment describing the sentence for murder did not exactly mirror statutory language, we do not believe the sentence sufficiently deviates from the statute so as to render it illegal. The use of the term "natural life," rather than "life" in the judgment is a distinction without a difference. In construing a judgment, if there are "two possible interpretations of the language of the judgment, that one will be adopted which makes it valid, in preference to one which would make it erroneous.'" Board of Education of Campbellsville Independent School District v. Faulkner, Ky., 433 S.W.2d 853, 855 (1968). It is presumed that the Court intended the judgment would be legally correct as applied to the facts of the case. Id.

In the present case, the sentence for murder can and should be construed consistent with KRS 532.030 to have imposed a life sentence with Dean being eligible for parole after having served twelve years pursuant to KRS 439.3401. See Sanders v. Commonwealth, Ky., 844 S.W.2d 391 (1992). Despite Dean's protestation to the contrary, there is nothing in the judgment clearly dealing with or limiting parole eligibility. Indeed, Dean admits that the Department of Corrections treated the judgment and sentence for murder as a life sentence and designated him as being eligible for parole in twelve years. Consequently, Dean has suffered no prejudice because of any ambiguity in the judgment.

Dean's reliance on Brock v. Sowders, Ky., 610 S.W.2d 591 (1980), is misplaced. In Brock, the Court held that the defendant was entitled to a writ of habeas corpus because Kentucky authorities were holding him in contravention of the judgment which provided that his Kentucky sentence would run concurrently with a previously imposed Indiana sentence. The Court held that the judgment would be applied even though no state statutes authorized running a Kentucky sentence concurrently with another state's prison term. Brock is distinguishable. Therein, the Court noted that the judgment explicitly provided for the concurrent sentences. It also stated that the concurrent term should apply, even though it was unauthorized, because it was part of the plea agreement favorable to the defendant and the government should not be allowed to

"welsh on its bargain." Id. at 592. See also Hudson v. Commonwealth, Ky., 932 S.W.2d 371 (1996).

In the original motion before the circuit court, Dean claimed the guilty plea was invalid because he received ineffective assistance of counsel. He has abandoned this claim on appeal by failing to address it in his appellate brief. A reviewing court generally will confine itself to errors set forth in the briefs and will not search the record for errors. Ballard v. King, Ky., 373 S.W.2d 591 (1963); Milby v. Mears, Ky. App., 580 S.W.2d 724 (1979). An appellant's failure to discuss a particular error in his brief is the same as if no brief had been filed on that issue. R. E. Gaddie, Inc. v. Price, Ky., 528 S.W.2d 708 (1975). Consequently, Dean has waived appellate review of the issue of ineffective assistance of counsel, and the trial court's decision is affirmed on this issue. See, e.g., Stansbury v. Smith, Ky., 424 S.W.2d 571 (1968). Moreover, given our construction of the judgment as imposing a statutory life sentence for murder, this is consistent with even Dean's understanding of the plea agreement,² so he would be unable to establish ineffective assistance of counsel.

For the foregoing reasons, we affirm the order of the Breckinridge Circuit Court.

ALL CONCUR.

²We note that the Commonwealth made no recommendation on sentencing, so Dean's belief that he would receive a life sentence from the judge is unsupported by the record.

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