

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001692-MR

LEROY FRYREAR

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
INDICTMENT NO. 138521

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, EMBERTON, AND MILLER, JUDGES.

DYCHE, JUDGE: Leroy Fryrear (Fryrear) appeals from the Jefferson Circuit Court order entered on June 19, 1997, which denied his motion for relief pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. We affirm.

In May 1969, Fryrear was convicted by a jury in Jefferson County for murder and rape. Fryrear received a sentence of life without the possibility of parole for the rape conviction. In 1973, Fryrear challenged his sentence for the rape conviction in a Kentucky Rules of Criminal Procedure (RCr) 11.42 motion. Fryrear was denied relief in Fryrear v. Commonwealth, Ky., 507 S.W.2d 144 (1974). Fryrear then sought a

writ of habeas corpus from the Lyon Circuit Court, which granted the writ but was later overturned by the Supreme Court of Kentucky for being an improper avenue for relief. Fryrear v. Parker, Ky., 920 S.W.2d 519 (1996). In February 1997, Fryrear filed a motion for relief pursuant to CR 60.02. On June 19, 1997, the Jefferson Circuit Court denied Fryrear's CR 60.02 motion without a hearing. This appeal followed.

On appeal, Fryrear argues that his sentence of life without the possibility of parole for rape violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Sections Two, Three, and Seventeen of the Kentucky Constitution. This Court granted Fryrear's motion to hold his appeal in abeyance by order entered on August 18, 1998, pending final disposition of Land v. Commonwealth, Ky., ___ S.W.2d ___ (No. 989-SC-000427-TG, rendered February 18, 1999).¹

In Land, the Kentucky Supreme Court affirmed the appellant's sentence of life without the possibility of parole for a rape conviction rendered prior to the adoption of the penal code in 1975. Despite the changes in the law, the Court upheld the long line of case law which consistently held the sentence of life without the possibility of parole for rape was constitutional. McDonald v. Commonwealth, Ky., 569 S.W.2d 134 (1978), cert. denied, 439 U.S. 1119 (1979); Green v. Commonwealth, Ky., 556 S.W.2d 684 (1977); and Fryrear v. Commonwealth, Ky., 507 S.W.2d 144 (1974). In accordance with

¹ The decision became final on March 11, 1999.

Land, supra, we find that the circuit court did not abuse its discretion in denying Fryrear's CR 60.02 motion.

The Jefferson County Circuit Court order denying Fryrear's CR 60.02 motion without a hearing is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Allison Connelly
Lexington, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler III
Attorney General

Ian G. Sonogo
Assistant Attorney General
Frankfort, Kentucky