

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001261-MR

JOSEPH MONTGOMERY

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT  
HONORABLE DOUGLAS M. GEORGE, JUDGE  
ACTION NO. 89-CR-00008

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: DYCHE, GUIDUGLI AND MILLER, JUDGES.

GUIDUGLI, JUDGE. Joseph Montgomery (Montgomery) appeals from an order of the Taylor Circuit Court entered April 30, 1998, denying Montgomery's motion for expungement of his criminal record. We affirm.

On June 29, 1988, Montgomery was indicted by a Taylor County Grand Jury for:

1. Possession of a firearm by a convicted felon;
2. Criminal attempt to commit capital murder;
3. Wanton endangerment in the first degree;  
and

4. Persistent felony offender in the first degree.

Upon motion of the Commonwealth, the trial court amended the indictment and severed the charge of possession of a firearm by a convicted felon. On October 17, 1989, Montgomery was convicted on the remaining counts by a Taylor County jury. Thereafter, on October 18, 1990, on direct appeal, the Kentucky Supreme Court, in an unpublished opinion (No. 89-SC-827-MR), vacated Montgomery's convictions for criminal attempt to commit murder and persistent felony offender in the first degree.

On February 3, 1998, Montgomery filed a motion to expunge his criminal record on the grounds that he "continues to be haunted by these unfounded and illegitimate charges" that still appear on his criminal record. On April 30, 1998, the trial court denied the motion for expungement. This appeal followed.

At the outset we should note that although Montgomery filed this appeal pro se, he is still held to the "stringent standards of law and rules of court" the same as an appellant who is represented by counsel. Having so stated, we note that Montgomery's brief did not comply with the appellate rules. He did not refer to the trial record at the beginning of his argument and he did not attached to his brief a copy of the order from which he was appealing as required by CR 76.12. We would be justified in dismissing this appeal without considering the merits given Montgomery's failure to comply with CR 76.12. However, because we believe that the trial court properly

disposed of Montgomery's motion for expungement, we will address the merits of his appeal.

Pursuant to KRS 431.076(4), the trial court "may grant the motion [for expungement] and order the sealing of all records in custody of the court and any records in the custody of any other agency or official, including law enforcement records." (emphasis added). When presented with Montgomery's motion, the trial court chose to exercise the discretion given it by statute and elected not to expunge Montgomery's record. Given the serious nature of the offenses Montgomery sought to have expunged, the lack of evidence presented by Montgomery to support his motion and the circumstance before the trial court concerning Montgomery's lengthy criminal history, we cannot say the trial court abused its discretion when it denied Montgomery's motion for expungement.

For the foregoing reasons, the decision of the trial court is affirmed.

ALL CONCUR.

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