

RENDERED: September 10, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-002787-MR

RAYMOND C. SILLER

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 94-CR-148

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GARDNER, HUDDLESTON AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Raymond C. Siller (Siller) appeals pro se from an order entered by the Fayette Circuit Court on October 13, 1997, which denied his post-judgment request for production of documents. Finding no error, we affirm.

Siller pled guilty but mentally ill on October 17, 1994, to charges of Unlawful Imprisonment in the First Degree (Kentucky Revised Statutes (KRS) 509.020) and Sodomy in the First Degree (KRS 510.070), and on February 6, 1995, was sentenced to

prison for a term of fourteen years. On September 29, 1997, Siller filed in the Fayette Circuit Court a pleading entitled "Plaintiff's Request for Production of Documents". This pleading named Ray Larson, the Commonwealth's Attorney for Fayette County, as the defendant, and requested that the production of documents by the Commonwealth "include any and all evidence presented to the Grand Jury pursuant to [Kentucky Rules of Criminal Procedure] RCr 5.16. . . ." On October 13, 1997, in its order denying the motion, the circuit court noted that Siller "appears to believe he is proceeding in a civil matter and has filed a Motion for Production of Documents Post Conviction." The circuit court then stated that "the Motion is improper and is hereby DENIED." This appeal followed.

Siller argues on appeal that he "was denied his constitutional right to inspect the evidence presented to the grand jury." While Siller cited RCr 7.24 to support his motion before the circuit court, in his brief he refers to the "Open Records Act" found at KRS 61.870 to 61.884. However, since Siller did not present his argument concerning the Open Records Act to the circuit court, this issue has not been preserved for appellate review. See Heucker v. Clifton, Ky., 500 S.W.2d 398 (1973).

As to RCr 7.24, it is clear that this rule permits a defendant to obtain discovery of certain items only prior to judgment. Sections 8 and 9 of RCr 7.24 state as follows:

- (8) If subsequent to compliance with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under the rule, he shall promptly notify the other party or his attorney, or the court, of the existence thereof.
- (9) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or an order issued pursuant thereto, the court may direct such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as may be just under the circumstances. (emphasis added).

Obviously, RCr 7.24 pertains to pre-judgment discovery and offers Siller no support for his post-judgment request.

As our Supreme Court has explained, "[t]he question before us is not whether his purpose is meritorious, or his motives genuine, but whether there is a legal basis for his claim. That basis must be either statutory or constitutional." Gilliam v. Commonwealth, Ky., 652 S.W.2d 856, 858 (1983). This Court has found no statutory or constitutional basis for Siller's position and he has provided none.

Accordingly, the order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Raymond C. Siller, pro se
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BRIEF FOR APPELLEE:

Hon. A.B. Chandler, III
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