

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000524-MR

OTTO FRANK WILLHITE

APPELLANTS

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
INDICTMENT NO. 94-CR-00480

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, DYCHE, AND MCANULTY, JUDGES.

DYCHE, JUDGE: Otto Frank Willhite appeals from an order of the Fayette Circuit Court which corrected his sentence of imprisonment from one year to five years. The order appealed from was entered as a result of Willhite's violation of an order placing him on probation for three years in lieu of five years' imprisonment.

Willhite claims that because the trial court entered an order revoking his probation and sentencing him to one year in prison on September 5, 1996, the order at issue herein, entered September 23, 1996, was beyond the power of the trial court. He asserts, correctly, that the trial court loses control over its

judgments ten days following the entry thereof; and that a petition for a writ of *habeas corpus* is the proper vehicle for challenging an order such as the one under which Willhite is incarcerated. Commonwealth v. Marcum, Ky., 873 S.W.2d 207 (1994).

That appears to be exactly what Willhite did in his action in the Morgan Circuit Court. Unfortunately for him, that court denied his relief, and that order is now final; he is prohibited from again raising the issue by the doctrine of *res judicata*. The litigants are the same, and the issues are the same. The present action is barred. Gregory v. Commonwealth, Ky., 610 S.W.2d 598 (1980).

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Otto Frank Willhite, *Pro Se*
West Liberty, Kentucky

BRIEF FOR APPELLEE:

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