

Commonwealth Of Kentucky

Court Of Appeals

NOS. 1998-CA-002827-MR
1999-CA-000507-MR
1999-CA-000509-MR

ROBERT F. CAMPBELL

APPELLANT

v. APPEALS FROM KENTON CIRCUIT COURT
HONORABLE DOUGLAS M. STEPHENS, JUDGE
ACTION NOS. 83-CR-0029, 80-CR-0282,
80-CR-0217, AND 82-CR-0153

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, JOHNSON, AND McANULTY, JUDGES.

McANULTY, JUDGE: This opinion contains three appeals from orders of the Kenton Circuit Court denying post-conviction motions filed by Robert F. Campbell (hereinafter appellant). The motions appellant filed in these actions do not afford him the relief he seeks, for reasons detailed hereinafter. Although the cases were not consolidated for appeal, this court has reviewed them together as they involve the same or similar issues. Therefore, we address them in a single opinion.

1998-CA-002827

Appellant filed a pro se motion for modification of sentence on September 28, 1998, from his 1983 conviction for escape in the second degree and being a persistent felony offender in the first degree. The trial court denied appellant's motion. On appeal, appellant first alleges that he has served his sentence. We agree with the trial court that appellant is not entitled to relief on this claim. The calculation of when a prisoner has served his sentence is performed by the Department of Corrections. KRS 196.070. Appellant does not provide any proof that the Department has calculated his time of service incorrectly and that he is entitled to release. The proper method of alleging entitlement to release from custody, moreover, is by way of a petition for writ of habeas corpus. Brumley v. Seabold, Ky. App., 885 S.W.2d 954, 956 (1994).

Second, we agree with the Commonwealth that appellant's complaints concerning the sentence itself are matters that could have and should have been raised on direct appeal. Ivey v. Commonwealth, Ky., 599 S.W.2d 456 (1980). Finally, since the trial court determined that it could not grant appellant relief on his motion for modification of sentence, it was not required to enter findings of fact. Its failure to enter same does not invalidate the order. Crain v. Dean, Ky., 741 S.W.2d 655, 658 (1987). We affirm the trial court's denial of the motion for modification of sentence.

1999-CA-000507, 1999-CA-000509

In appellant's remaining appeals, he alleges that he has served out his sentences for burglary in the third degree

(80-CR-282, 1999-CA-507) and trafficking in cocaine (80-CR-217, 1999-CA-509). Appellant filed motions to compel entry of satisfaction of judgment pursuant to CR 79.02 in both cases on December 29, 1998. The trial court entered orders denying the motions on January 29, 1999. Appellant claims on appeal that his sentences have been served, and attempts to use CR 79.02 to document this. He claims that the trial court was required to certify in the circuit court records pursuant to CR 79.02 that his judgment has been "satisfied." We agree with the Commonwealth that the Rule in question does not apply to a criminal judgment. It allows for entry on the record upon full payment of the amount due in a civil judgment.¹ See, e.g. Commonwealth of Kentucky, Dept. of Highways v. Back, Ky., 391 S.W.2d 707 (1965). The trial court correctly determined that CR 79.02 does not afford appellant any relief. As stated above, an allegation that a prisoner is being held illegally is the subject of a petition for writ of habeas corpus. The denial of the motion was proper.

For the foregoing reasons, we determine that appellant is not entitled to relief in the above cases and, accordingly, we affirm.

ALL CONCUR.

¹ Satisfaction is defined in Black's Law Dictionary (5th ed. 1983) as "The discharge of an obligation by paying a party what is due to him (as on a mortgage, lien, or contract), or what is awarded to him, by the judgment of a court or otherwise. Thus, a judgment is satisfied by the payment of the amount due to the party who has recovered such judgment, or by his levying the amount."

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