

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001211-MR

RICHARD W. WEST

APPELLANT

v.

APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE DORTCH, JUDGE
ACTION NO. 93-CR-00004

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, KNOPF AND TACKETT, JUDGES.

TACKETT, JUDGE: Appellant, Richard West (West), appeals pro se from an order of the Ohio Circuit Court denying his Kentucky Rule of Civil Procedure (CR) 60.02 motion. We affirm.

West was indicted for forgery in the second degree, and later entered into a plea agreement with the Commonwealth whereby he would receive a two-year prison term. In 1993, the trial court sentenced West in accordance with the plea agreement and ordered his sentence to "run consecutive to a five-year sentence he has received from the Daviess Circuit Court." West subsequently was granted shock probation, but that probation was revoked in May 1995.

West filed a CR 60.02 motion in 1997 asking the trial court to modify his sentence to run concurrently with any other sentence he was serving. The only basis for the motion was the alleged hardship West's incarceration was causing his family. The trial court denied West's motion later in 1997. In October 1998, West filed a second CR 60.02 motion. That motion stated that the trial court erred by ordering his Ohio County sentence to run consecutively to his Daviess County sentence because he had not been formally sentenced in Daviess County at the time the Ohio County sentence was imposed. The trial court denied West's second CR 60.02 motion without elaboration on December 2, 1998.

In a letter to the clerk of the Ohio Circuit Court dated December 24, 1998, but not filed until January 12, 1999, West stated that he wanted to appeal the trial court's order. West later filed a "motion appealing order" on February 1, 1999, and a motion for an evidentiary hearing. The trial court issued an order denying West's motion for an evidentiary hearing in March 1999. West then filed a notice of appeal in May 1999, stating that he was appealing the trial court's December 2, 1998 order.

On appeal, West again argues that the trial court erred by ordering his Ohio County sentence to be served consecutive to his Daviess County sentence. The Commonwealth raises serious concerns regarding whether West's appeal was timely filed. However, even examining the matter on its merits, West's argument must fail.

CR 60.02 "is meant to provide relief which is not available by direct appeal or under [Kentucky Rule of Criminal Procedure] RCr 11.42." Barnett v. Commonwealth, Ky., 979 S.W.2d 98, 101 (1998). West has not demonstrated why he did not avail himself of those avenues of relief between his 1993 sentencing and his October 1998 CR 60.02 motion. Accordingly, West has not demonstrated why he is entitled to the "special, extraordinary" remedy afforded by CR 60.02. Id.

West fails to cite authority which would require the trial court to grant his CR 60.02 motion. The transcript of West's guilty plea hearing conclusively shows that he was made fully aware of the trial court's ability to order his Ohio County sentence to be served concurrently or consecutively with his Daviess County sentence, yet he still persisted in his desire to enter a plea of guilty. The transcript provides the following colloquy:

Q 27 It is my understanding that you have similar charges pending in other counties. Is that correct?

A Yes sir, Hopkinsville and Daviess County.

Q 28 Do you understand that I may order those sentences in those other counties to run concurrently or consecutively?

A Yes, sir.

Q 29 Do you understand what concurrent and consecutive means?

A Yes, sir.

Q 30 Do you understand that the Commonwealth has made no recommendation in regard to that?

A Yes, sir.

Q 31 What is your understanding of the Commonwealth's recommendation. You just tell me in your own words.

A Okay, I get a sentence of two years, but whether it runs concurrent or consecutive with the other time I am getting depends on my presentence investigation and report.

. . . .

Q 37 And that I can also sentence you to five years to run consecutive to the time you can get in these other counties?

A Yes, sir.

Q 38 And you still want to plead guilty?

A Yes, sir.

West's "[s]olemn declarations in open court carry a strong presumption of verity." Centers v. Commonwealth, Ky. App., 799 S.W.2d 51, 54 (1990).

West has not shown that the trial court abused its discretion in denying his CR 60.02 motion. Therefore, the trial court's judgment must be affirmed. Barnett, supra at 102 ("Given the high standard for granting a CR 60.02 motion, a trial court's ruling on the motion receives great deference on appeal and will not be overturned except for an abuse of discretion.").

The judgment of the Ohio Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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