

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000804-MR

CLIFTON POSEY

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN D. MINTON, JR., JUDGE
ACTION NO. 82-CR-00700

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: McANULTY, MILLER, AND TACKETT, JUDGES.

MILLER, JUDGE: Clifton Posey brings this appeal from a March 10, 1999, order of the Warren Circuit Court We affirm.

In November 1982, Posey stabbed a fellow student at the Bowling Green Business College in Warren County, Kentucky. He apparently thought the student was making untoward sexual advances.

Posey was subsequently found guilty of first-degree assault under Kentucky Revised Statutes (KRS) 508.010 and adjudicated a first-degree persistent felony offender. KRS 532.080(3). He was sentenced to life imprisonment. The sentence

was upheld by the Supreme Court of Kentucky in Posey v. Commonwealth, Ky., 664 S.W.2d 203 (1984).

In 1992, Posey filed a Ky. R. Crim. P. (RCr) 11.42 motion. This motion was denied and no appeal was taken.

In 1997, Posey filed a Ky. R. Civ. P. (CR) 60.02 motion seeking to set aside his conviction. He coupled this motion with a request for *in forma pauperis* status and assignment of counsel. Posey tendered an order granting all three requests. On February 11, 1997, Judge Thomas R. Lewis of the Warren Circuit Court inadvertently entered the tendered order granting the three requests. Judge Lewis, however, did not in fact intend to set aside Posey's conviction under CR 60.02, but only intended to grant *in forma pauperis* status and assignment of counsel. On February 27, 1997, Judge Lewis discovered his error and *sua sponte* modified the February 11, 1997, order by denying CR 60.02 relief, but granting *in forma pauperis* status and assignment of counsel. The matter reached the Supreme Court again in Posey v. John D. Minton, Jr., Judge. Relevant to this appeal, the Supreme Court ruled that Posey's case had been taken from Judge Lewis by recusal on August 5, 1992 -- before the inadvertent order was entered on February 11, 1997.¹ Thus, Judge Lewis was without jurisdiction to rule upon the CR 60.02 motion. The Supreme Court decided the CR 60.02 motion was still viable and ripe to be ruled upon.

¹Judge Lewis' recusal was at the insistence of Posey.

On March 10, 1999, Judge John D. Minton, Jr., finally denied Posey's CR 60.02 motion. This appeal follows.

Posey contends the circuit court committed reversible error by denying the CR 60.02 motion. In the motion, Posey claimed to have been improperly adjudicated a persistent felony offender in the first degree and denied effective assistance of counsel. These issues were previously raised and rejected in Posey's prior RCr 11.42 motion. As such, we are of the opinion that Judge Minton properly denied Posey's CR 60.02 motion. See Gross v. Commonwealth, Ky., 648 S.W.2d 853 (1983), and Hampton v. Commonwealth, Ky., 454 S.W.2d 672 (1970).

Posey also argues that Judge Lewis' February 11th order should be given full legal effect. The Supreme Court has already decided this issue, and we are bound by same. Rule of the Supreme Court 1.030(8)(a).

For the foregoing reasons, the order of the Warren Circuit Court is affirmed.

ALL CONCUR.

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