

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000388-MR

DARNELL HOPEWELL

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
ACTION NO. 82-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: McANULTY, MILLER, AND TACKETT, JUDGES.

MILLER, JUDGE: Darnell Hopewell brings this appeal from an Order of the Boone Circuit Court entered December 30, 1999, overruling a "Motion To Correct Unlawful Sentence." We affirm.

In 1982, Hopewell was convicted in the Boone Circuit Court of robbery (Kentucky Revised Statutes (KRS) 515.020) and kidnapping (KRS 509.040). On March 5, 1982, a judgment and sentence was entered which provided as follows:

[I]mprisonment as follows: 15 years on robbery I, 20 years on kidnapping consecutively with a previous sentence imposed.

A direct appeal was taken to the Kentucky Supreme Court and affirmed. See Hopewell v. Commonwealth, Ky., 641 S.W.2d 744

(1982). Subsequently, Hopewell has made numerous attacks upon his sentence. One of his attacks was through a Ky. R. Crim. P. (RCr) 11.42 proceeding. Therein, he claimed that the sentence should have been concurrent under KRS 532.110 and RCr 11.04. The circuit court denied said motion and this Court ultimately affirmed same in Hopewell v. Commonwealth, Appeal No. 1996-CA-001691-MR, rendered August 1, 1997.

On December 10, 1999, Hopewell filed the instant proceeding styled "Motion To Correct Unlawful Sentence." He argued again that his sentence should be concurrent under KRS 532.110 and RCr 11.04. The circuit court entered an order denying relief thus precipitating this appeal.

We affirm the circuit court on the same basis as in our previous decision of Hopewell v. Commonwealth, Appeal No. 1996-CA-001691-MR, rendered August 1, 1997. Therein, it was stated:

The appellant then moved to vacate his sentence under RCr 11.42 and this Court affirmed the trial court's denial of this motion. Hopewell v. Commonwealth, Ky. App., 687 S.W.2d 153 (1985).

The appellant was sentenced to fifteen years for the robbery conviction and twenty years for the kidnapping conviction. He now alleges that the judgment did not specify whether these sentences were to run consecutively or concurrently. RCr 11.04 and KRS 532.110 state that if a judgment does not specify that multiple sentences are to run concurrently or consecutively, then the sentences must run concurrently.

While the sentence imposed by the court initially might appear ambiguous, when the fact that the appellant had no sentence previous to that imposed in the 1982 judgment is taken into account, it is clear that the court intended the robbery and kidnapping charges to be served consecutively. It is

obvious from the record that the appellant understood this to be true, and even more important, the Supreme Court of Kentucky considered it to be true. See Hopewell v. Commonwealth, Ky., 641 S.W.2d 744 (1982).

Hopewell v. Commonwealth, Appeal No. 1996-CA-001691-MR, rendered August 1, 1997, p. 2.

This appeal is merely a successive collateral attack and cannot be entertained. See Gross v. Commonwealth, Ky., 648 S.W.2d 853 (1983), and Hampton v. Commonwealth, Ky., 454 S.W.2d 672 (1970).

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

_____ ALL CONCUR.

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