

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-002223-MR

LARRY E. KEPHART

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE PATRICIA M. SUMME, JUDGE  
ACTION NO. 84-CR-00206

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

MILLER, JUDGE: Larry E. Kephart brings this *pro se* appeal from a September 8, 2000, order of the Kenton Circuit Court. We affirm.

On December 18, 1984, appellant was sentenced to ten years' imprisonment upon the charge of first-degree robbery under Indictment No. 84-CR-206. He was taken to the Kentucky State Reformatory at LaGrange, Kentucky, on January 4, 1985, for service of sentence. On August 23, 1985, appellant was sentenced to one year imprisonment upon the charge of first-degree promoting contraband under Indictment No. 85-CR-128. This crime was committed while confined in the institution at LaGrange. The sentence was ordered to run consecutively with his prior

sentence, which brought his total sentence to eleven years. He was paroled July 30, 1987. His parole was subsequently revoked, and he was returned to prison May 30, 1990. On June 3, 1990, appellant was sentenced to twenty years' imprisonment on two counts of first-degree robbery and for being a first-degree persistent felony offender under Indictment No. 89-CR-254. This twenty-year sentence was ordered to run consecutively to his previous sentence, which brought the total sentence length to thirty-one years.

On August 31, 2000, appellant filed a motion under Ky. R. Civ. P. (CR) 60.02. Appellant was granted *in forma pauperis* status. On September 8, 2000, appellant's motion was denied. This appeal follows.

Appellant contends the circuit court committed reversible error by denying his CR 60.02 motion. Specifically, appellant contends that the Department of Corrections violated the prohibition against double jeopardy by improperly calculating his sentence. The Department of Corrections calculated appellant's total sentence based upon the three indictments to be thirty-one years. Appellant urges this Court to vacate his ten-year sentence under Indictment No. 84-CR-206, or in the alternative, to enter an order requiring the ten-year sentence to run concurrently with his twenty-year sentence imposed by the circuit court in Indictment No. 89-CR-254. We perceive no basis for appellant's allegations. We think the Department of Corrections did, in fact, calculate his sentences correctly as such sentences were to run consecutively.

Upon the whole, we are of the opinion that the circuit court did not commit reversible error by denying appellant's CR 60.02 motion.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Larry E. Kephart, Pro Se  
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BRIEF FOR APPELLEE:

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