

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000434-MR

DONNA LEE IVEY

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LEWIS G. PAISLEY, JUDGE  
INDICTMENT NOS. 99-CR-0865 AND 99-CR-1073

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING

\*\* \*\* \* \* \*

BEFORE: DYCHE, JOHNSON, AND KNOPF, JUDGES.

DYCHE, JUDGE: The Grand Jury of Fayette County handed up two indictments against appellant, Donna Lee Ivey. No. 99-CR-865 charged her with 21 counts of Criminal Possession of a Forged Instrument, second degree (KRS 516.060), and one count of Giving a False Name to a Police Officer (KRS 523.110). No. 99-CR-1073 charged her with one count of Theft by Unlawful Taking, over \$300 (KRS 514.030).

Ivey negotiated a plea with the Commonwealth Attorney which called for her to plead guilty to some of the charges in the first indictment, and to be sentenced to a term of probation,

on the condition that she make restitution in the amount of \$949.68; in addition, the charges in the second indictment would be dismissed and she would make restitution in the amount of \$1645.00.

Apparently because the indictments were initially assigned to different divisions of the Fayette Circuit Court, the entry of an order concerning restitution under the second indictment was deferred, and a hearing was held at a later date. Following that hearing, the court ordered Ivey to pay restitution in the amount of \$1720.50. This appeal followed.

The Commonwealth agrees with Ivey that relief is appropriate in this case. The original plea agreement was not followed by the court, through inadvertence rather than intent; that original agreement should be honored, as Ivey argues, and as the Commonwealth agrees.

The order of the Fayette Circuit Court is vacated, and this matter is remanded for further proceedings not inconsistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Nick Payne  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General of Kentucky

Matthew D. Nelson  
Assistant Attorney General  
Frankfort, Kentucky