

RENDERED: January 4, 2002; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002259-MR

FELIX THOMAS BUCKMAN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 82-CR-001808

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, DYCHE, AND MILLER, JUDGES.

BARBER, JUDGE: Felix Thomas Buckman ("Buckman") appeals from a July 5, 2000, order of the Jefferson Circuit Court, denying his motion for the circuit court to reconsider its order denying his motion to amend his sentence. We affirm.

Buckman was convicted by a jury, in May 1983, of two counts of first-degree robbery, one count of first-degree burglary, and of being a second-degree persistent felony offender. Buckman was sentenced, on May 23, 1983, to twenty-years on each of the three counts, each count enhanced to forty-years as a result of the persistent felony offender conviction for a total of one hundred twenty years. Buckman appealed to the Kentucky Supreme Court which affirmed his conviction. Buckman's sentence became final in 1984.

Buckman then filed a motion to modify his sentence on January 11, 2000, which was denied on March 13, 2000. Buckman then filed a motion to reconsider the March 13, 2000 order which was denied on July 5, 2000. This Court then granted Buckman a belated appeal by order entered May 11, 2001.

Buckman's sole argument on appeal is that the circuit court erred in not modifying his sentence to conform to changes in the law. When Buckman was sentenced in 1983, KRS 532.060 set the maximum term for felony sentencing at life in prison. Amendments to KRS 532.060 (2)¹ effective July 15, 1998 set the maximum sentence for a felony, when stated as a term of years, at 50 years.

Buckman argues that this 1998 amendment should apply retroactively to his sentence based on either KRS 532.080 (9)² or KRS 446.110³. Buckman's reliance on KRS 532.080 (9) is

¹KRS 532.060 (2):

The authorized maximum terms of imprisonment for felonies are:

(a) For a Class A felony, not less than twenty (20) years nor more than fifty (50) years, or life imprisonment;

(b) For a Class B felony, not less than ten (10) years nor more than twenty (20) years;

(c) For a Class C felony, not less than five (5) years nor more than ten (10) years; and

(d) For a Class D felony, not less than one (1) year nor more than five (5) years.

²KRS 532.080 (9):

The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.

³KRS 446.110:

No new law shall be construed to repeal a former law as to any offense committed against a former law, nor as to any act done, or penalty forfeiture or punishment incurred, or any right accrued or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done,

(continued...)

misplaced. KRS 532.080 (9) does provide for retroactive application of certain amendments, but only those contained in Ky. Acts ch. 396, § 11. The changes in KRS 532.060 relevant to maximum sentences were not included in Ky. Acts ch. 396, § 11. Buckman even admits that KRS 532.080 (9) does not work, on page three of his brief.

Buckman's reliance on KRS 446.110 is also misplaced. KRS 446.110 only provides for application of amended punishment to judgments pronounced after a new law takes effect. Buckman cites Commonwealth v. Phon, Ky., 17 S.W.3d 106, 108 (2000) as support for his argument that KRS 446.110 applies to the case *sub judice*. Phon dealt with a certification of the law where the charged crime was committed prior to a change in the law, but where a sentence would not be handed down until after the changed law went into effect. The Supreme Court in Phon held KRS 446.110 proper and relevant in the Phon situation. However, in the case *sub judice*, Buckman's sentence became final in 1984, fourteen years before the changes in the law he wants retroactively applied to his sentence took effect. Buckman has failed to show that the circuit court erred in refusing to modify his sentence.

(...continued)

or any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising before the new law takes effect, except that the proceedings thereafter had shall conform, so far as practicable, to the laws in force at the time of such proceedings. If any penalty, forfeiture, or punishment is mitigated by any provision of the new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect.

For the foregoing reasons, the Jefferson Circuit Court
is affirmed.

ALL CONCUR.

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