

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000920-MR

JERRY LEE BRANSCUM

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE DANIEL J. VENTERS, JUDGE
ACTION NO. 91-CR-00017

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: EMBERTON, CHIEF JUDGE; SCHRODER, AND TACKETT, JUDGES.

SCHRODER, JUDGE: Jerry Lee Branscum appeals from an order of the Pulaski Circuit Court denying his motion to correct sentence pursuant to RCr 11.42. This same request was denied in a previous motion. Hence, we affirm.

Appellant pled guilty to two counts each of second-degree rape (KRS 510.050), second-degree sodomy (KRS 510.080), and first-degree sexual abuse (KRS 510.110). Final judgment was entered on October 25, 1991, with appellant sentenced to 30 years' imprisonment in accordance with the plea agreement. On August 31, 1992, appellant filed a motion for modification of sentence, which was denied on September 1, 1992. On

September 14, 1995, appellant, *pro se*, filed an RCr 11.42 motion to vacate his sentence, alleging ineffective assistance of counsel. The motion was denied on November 16, 1995, and the denial affirmed by this court in 96-CA-1574-MR.

On June 19, 1998, appellant, *pro se*, filed a "Motion to Correct Illegal Sentence," pursuant to CR 60.02(f). In the motion, appellant argued that his 30-year sentence exceeded the maximum of 20 years authorized by KRS 532.110(1)(c), and requested that his sentence therefore be corrected to a 20-year sentence. The trial court denied the motion. In an unpublished opinion, Branscum v. Commonwealth, 1998-CA-002246-MR, this Court affirmed the trial court, stating as follows:

On June 19, 1998, appellant filed the instant "Motion to Correct Illegal Sentence." The motion states that it is filed pursuant to CR 60.02(f) which permits a trial court to relieve a party from a judgment for "extraordinary" grounds. Appellant argued in that motion, as he does here, that his sentence is incorrect, and should be adjusted so that he has only twenty, rather than thirty, years to serve. The trial court treated this motion as a successive motion under RCr 11.42, and denied same. This appeal followed.

Appellant acknowledges that his motion is a successive 11.42 motion, forbidden by the text of that rule. He asks for leniency due to his *pro se* status. His argument is that if he had been granted appointed counsel by the trial court, this ground would have been recognized earlier, thereby preventing the necessity of the successive motion. Unfortunately for appellant, there is no distinction made in the rule, or in decisions interpreting it, allowing successive motions by *pro se* parties. We therefore must agree with the trial court, and affirm its decision.

On July 10, 2000, appellant filed a "Motion to Correct Invalid Sentence," presenting essentially the same argument as in the aforementioned June 19, 1998 motion - that his 30-year sentence exceeded the maximum 20-year sentence authorized by KRS 532.110(1)(c) for his convictions. On January 30, 2001, the Department of Public Advocacy filed on appellant's behalf a "Motion to Correct Sentence." The motion indicated that it was filed pursuant to RCr 11.42, and similarly requested that appellant's sentence be corrected to 20 years on grounds that this was the maximum sentence allowable for appellant's conviction pursuant to KRS 532.110(1)(c). On March 29, 2001, the trial court entered an order denying the motion, on grounds that this Court had previously ruled on the issue in Branscum v. Commonwealth, 1998-CA-002246-MR, and, additionally, that appellant waived any objections or defenses when he entered the guilty plea. Appellant appeals from the March 29, 2001, order.

We conclude that the subject of the present appeal was previously considered by this Court in Case No. 1998-CA-002246-MR. That decision stands as the law of the case. Thomas v. Commonwealth, Ky., 931 S.W.2d 446, 450 (1996); Williamson v. Commonwealth, Ky., 767 S.W.2d 323 (1989).

For the aforementioned reasons, the March 29, 2001, order of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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