

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002210-MR

ROBERT MCKINNEY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 91-CR-002457

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, COMBS, and TACKETT, Judges.

COMBS, JUDGE. Robert McKinney appeals *pro se* from an order of the Jefferson Circuit Court entered on October 4, 2002, which denied his post-judgment motion for clarification of his sentence. Because the same issues raised in this appeal have already been decided by another panel of this Court, our review is barred by the principles of *res judicata*. Therefore, we affirm.

In 1993, the Jefferson Circuit Court sentenced McKinney to serve ten years in prison pursuant to a plea agreement with the Commonwealth. The agreement consolidated several indictments charging McKinney with multiple counts of theft by deception. It provided that McKinney's sentence would run concurrently with a sentence he was serving in Texas. The Jefferson Circuit Court did not indicate whether it was to run concurrently or consecutively with sentences totally eight years that had been imposed in 1988 and 1990 in Barren, Metcalfe, and Bullitt Counties. Nevertheless, the court specifically provided that McKinney's sentence "shall run pursuant to KRS¹ 533.060, if applicable."

In 1997, McKinney filed a motion for *habeas corpus* relief in the Jefferson Circuit Court. At issue in this appeal is the effect of the order entered on that motion on August 14, 1997, which stated in part as follows:

[I]f [McKinney] has completed service of his sentence in the Texas case, then he has completed service of his sentence in this case and is entitled to be discharged.

The record does not reflect what happened to McKinney after the entry of the 1997 order. However, on October 24, 2001, he filed a petition for declaration of rights in the Muhlenberg Circuit Court, the county where he is incarcerated,

¹ Kentucky Revised Statutes.

alleging that he was entitled to be released pursuant to the 1997 order. The petition was denied in January 2002. This Court affirmed the denial of McKinney's petition on May 30, 2003.² As McKinney did not seek further review of this Court's opinion, it became final.

On July 18, 2002, McKinney sought "clarification" of his sentence in the Jefferson Circuit Court. In the order from which McKinney now appeals, the circuit court determined that the Department of Corrections had not miscalculated McKinney's sentence. Because McKinney was on parole when he committed the crimes for which he was sentenced in 1993, the court concluded that KRS 533.060 mandated that his 1993 sentence run consecutively to the 1988/1990 sentences from Barren, Metcalfe, and Bullitt Counties. The court rejected McKinney's argument that its 1997 order had the legal effect of changing its 1993 sentence to run it concurrently with his prior sentences from Kentucky.

The issues raised in this appeal are identical to those raised and considered in McKinney's appeal from the order of the Muhlenberg Circuit Court. Those issues are: (1) whether the trial court erred in concluding that it intended his 1993 sentences to run consecutively as to his 1988/1990 sentences and

² See, McKinney v. Commonwealth of Kentucky, Kentucky Corrections Cabinet, No. 2002-CA-000317-MR, decided by Chief Judge Emberton, and Judges Buckingham and Paisley.

(2) whether it erred in ruling that it did not intend to alter its sentence by its 1997 order. Both issues were finally and conclusively resolved unfavorably to McKinney in his previous appeal. Under the law of the case doctrine, we are bound by this Court's earlier opinion that involves the same parties and the same issues. See, W. T. Grant v. Indian Trail Trading Post, Ky., 438 S.W.2d 91 (1968); Eggerson v. Commonwealth, Ky.App., 656 S.W.2d 744 (1983); Revenue Cabinet v. Samani, Ky.App., 757 S.W.2d 199 (1988).

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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