

RENDERED: AUGUST 20, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-000690-MR

CHYRALLE ROWAN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NOS. 81-CR-000466 & 81-CR-000987

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, CHIEF JUDGE; GUIDUGLI AND KNOPF, JUDGES.

KNOPF, JUDGE: In March 1981, while on probation for a 1976 conviction for robbery, Chyralle Rowan burglarized a residence in Anchorage. He was indicted for the burglary in April 1981 and released on bond. In August 1981, while awaiting trial for the April offense, Rowan burglarized another residence. He was indicted for this second burglary in September 1981. In September 1982, Rowan pled guilty to both charges. The plea

agreement provided for ten-year sentences for each, with one of the sentences enhanced to twenty years because of Rowan's status as a persistent felon. The sentences were to run consecutively for a total sentence of thirty years. By judgment entered September 9, 1982, the Jefferson Circuit imposed the thirty-year sentence.

In January 2003, Rowan moved the circuit court pursuant to CR 60.02 for relief from this sentence because, he alleged, it violated the twenty-year limit for an aggregate sentence established by KRS 532.110(1)(c) and KRS 532.080(6)(b). By order entered March 12, 2003, the circuit court denied Rowan's motion. Rowan has appealed pro se from that denial and insists that the trial court misapplied the sentencing statutes. We affirm.

As the Commonwealth correctly notes, KRS 533.060 mandates consecutive sentences for offenses committed while the defendant is on probation or awaiting trial. Our Supreme Court has held that if KRS 533.060 applies to a sentence, then the limits imposed by KRS 532.110 do not apply.¹ KRS 533.060 applies separately to each of Rowan's sentences, and thus mandates that they be served consecutively to each other as well as to Rowan's reinstated sentence for the 1976 robbery. The cases upon which

¹ Devore v. Commonwealth, Ky., 662 S.W.2d 829 (1984).

Rowan relies are not to the contrary. They involve the application of KRS 532.110 when KRS 533.060 does not apply.

Rowan contends that because KRS 533.060 was amended after his offenses, application of the amended statute to him violates the constitution's Ex Post Facto Clause. It was not, however, the amended version of the statute that was applied. KRS 533.060 was first adopted in 1976, and every version of the statute in effect since then, including the version in effect at the time of Rowan's offenses, has mandated consecutive sentences for offenses committed during probation or pre-trial release.

The trial court, therefore, did not err by denying Rowan's motion for sentencing relief. Accordingly, we affirm the March 12, 2003, order of the Jefferson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Chyralle Rowan, pro se
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Tami Allen Stetler
Assistant Attorney General
Frankfort, Kentucky