

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001074-MR

ANTHONY GALE HANKINS

APPELLANT

v. APPEAL FROM WEBSTER CIRCUIT COURT
HONORABLE C. RENE' WILLIAMS, JUDGE
ACTION NO. 04-CR-00063

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL, MOORE AND STUMBO, JUDGES

NICKELL, JUDGE: Anthony Gale Hankins (“Hankins”) appeals from the Webster Circuit Court’s denial of his motion to alter, amend or vacate judgment pursuant to CR¹ 60.02(a)(b)(c) and (f). We affirm.

On August 8, 2004, Hankins unlawfully entered the Crop Production Services facility in Poole, Kentucky, with a five-gallon bucket and a hose. Once

¹ Kentucky Rules of Civil Procedure.

inside, Kentucky State Police detective Brian Babbs observed Hankins scale an anhydrous ammonia nurse tank and arrested him after a short chase. The bucket later tested positive for anhydrous ammonia.

On October 6, 2004, a Webster County grand jury charged Hankins in indictment 04-CR-00063 with: theft of anhydrous ammonia² with intent to manufacture methamphetamine;³ tampering with anhydrous ammonia equipment⁴ with intent to manufacture methamphetamine; criminal trespass in the third degree;⁵ fleeing or evading police in the second degree;⁶ and resisting arrest.⁷ While out on bail and awaiting trial on the Webster County charges, Hankins committed additional drug offenses on February 11, 2005, and was charged in Henderson County under indictments 05-CR-00133 and 05-CR-00176.⁸

Subsequently, Hankins entered plea agreements in both Webster and Henderson Counties. In accordance with these agreements, the Henderson Circuit

² Kentucky Revised Statutes (KRS) 514.030.

³ KRS 218A.1432.

⁴ KRS 250.4892.

⁵ KRS 511.080.

⁶ KRS 520.100.

⁷ KRS 520.090.

⁸ Conspiracy to manufacture methamphetamine, KRS 506.040, KRS 218A.1432; conspiracy to possess anhydrous ammonia in an unapproved container with intent to manufacture methamphetamine, KRS 506.040, KRS 250.489, KRS 218A.1432; first degree possession of a controlled substance (second offense), KRS 218A.1415; unlawful possession of methamphetamine precursor, KRS 218A.1415; and possession of drug paraphernalia, KRS 218A.500.

Court sentenced Hankins to seven years' imprisonment on June 24, 2005, and specified his sentence "shall be served consecutively to any sentence the defendant has heretofore been sentenced to serve." On August 5, 2005, the Webster Circuit Court ordered Hankins to serve seven years' imprisonment and also specified his sentence shall run "consecutively with any previous sentence imposed." Hence, Hankins would be imprisoned fourteen years for eight felonies and four misdemeanors, many of which were drug-related and some of which were committed while free on bond.

After serving one year of his sentence, Hankins filed a motion for post-conviction relief pursuant to CR 60.02(a)(b)(c) and (f) on September 1, 2006, in Webster County. Therein, he claimed his plea was not knowingly, intelligently and voluntarily made; his Webster County sentence should have been ordered to run concurrently with his Henderson County sentence; and his fourteen-year sentence was disproportionate.

In denying the motion, the Webster Circuit Court found the plea offer signed by Hankins and his attorney was voluntary. Further, both the plea offer and the order accepting the plea stated the Webster County sentence would be served consecutively to any prior sentence. The Webster Circuit Court also noted it had no specific recall of the case but it was unlikely it would have run the sentences concurrently because Hankins was out on bail when he committed the Henderson County crimes. Lastly, the Webster Circuit Court found an aggregate term of

fourteen years' imprisonment was reasonable given the quantity and nature of the offenses committed.

Hankins raises one question on appeal: should his Webster County sentence run concurrently with his Henderson County sentence? We answer this question in the negative.

The denial of a CR 60.02 motion is reviewed for an abuse of discretion. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky.App. 2000). A trial court may grant relief under CR 60.02 after a movant has demonstrated "he is entitled to this special, extraordinary relief." *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). To abuse its discretion, the trial court's decision must be "arbitrary, unreasonable, unfair, or unsupported by sound legal principals." *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky. 2007). We will affirm the trial court's decision absent a "flagrant miscarriage of justice." *Gross, supra*, 648 S.W.2d at 858.

Here, the trial court properly found the Webster and Henderson County sentences should run consecutively. The language of KRS 530.060(3) is specific: "[w]hen a person commits an offense while awaiting trial for another offense . . . the sentence imposed . . . shall not run concurrently with confinement for the offense for which the person is awaiting trial." Because Hankins was awaiting trial in Webster County when he committed the Henderson County offenses, he was not entitled to concurrent sentencing as a matter of law.

Further, the Henderson Circuit Court was the first to sentence Hankins; the Webster Circuit Court's order was entered a month later. Thus, when the Webster Circuit Court ordered Hankins's sentence to run "consecutively with any previous sentence imposed," it obviously intended his sentence to run consecutively to the previously imposed Henderson County sentence. In light of the clear language of KRS 530.060(3) and the trial court's stated desire not to run the sentences for the Webster and Henderson offenses concurrently, we conclude the Webster Circuit Court did not abuse its discretion.

For the foregoing reason, the order of the Webster Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Anthony Gale Hankins, pro se
Sandy Hook, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Tami Allen Stetler
Assistant Attorney General
Frankfort, Kentucky