

RENDERED: JANUARY 13, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000723-MR

MARTINE WALLACE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, SPECIAL JUDGE
ACTION NO. 00-CR-000419

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MOORE, AND THOMPSON, JUDGES.

DIXON, JUDGE: Martine Wallace, proceeding *pro se*, appeals from a Jefferson Circuit Court order denying his Kentucky Rules of Civil Procedure (CR) 60.02 motion to vacate his prior conviction in accordance with the provisions of his guilty plea. Based upon Wallace's previous appeal of this case and this specific issue, we affirm the Jefferson Circuit Court order.

On September 7, 2000, Wallace pleaded guilty to third-degree escape, two-counts of third-degree assault, operating on a suspended or revoked license, disorderly conduct, and third-degree criminal mischief. Based upon Wallace's plea, the Commonwealth offered him a total sentence of five-years' imprisonment. The Commonwealth recommended that Wallace's sentence be probated for three-years. The offer stated, "If the [defendant] successfully completes probation – no violations of any type-technical or otherwise[,] the [Commonwealth] will agree to his 60.02 to vacate and allow him to re-enter pleas to assault 4th [degree] (misdemeanors)."

While Wallace was on probation, the Commonwealth moved the trial court to revoke Wallace's probation based upon two special supervision reports filed by his probation officer that alleged that Wallace had violated the terms and conditions of his probation. The trial court remanded both motions without making any findings of fact concerning whether a violation occurred.

On September 29, 2005, Wallace filed a CR 60.02 motion in the Jefferson Circuit Court requesting that his conviction be vacated based upon his completion of probation. The Commonwealth objected to Wallace's motion on the grounds that Wallace had violated the terms and conditions of his probation even though his probation had not been revoked. Although the trial court previously did not make any findings of fact that Wallace violated his probation, and a complete hearing was not held, the court concluded that the violations alleged by Wallace's probation officer were sufficient. The trial court, thus, denied Wallace's motion.

On December 7, 2005, Wallace appealed the trial court's denial of his CR 60.02 motion to this Court. On December 1, 2006, our Court affirmed the trial court's judgment.¹ Then, on January 28, 2010, Wallace once again moved the trial court to vacate his prior conviction under CR 60.02. On March 5, 2010, the trial court again denied his motion. This appeal follows.

Wallace argues that the trial court's failure to make specific findings of fact concerning his alleged violations of probation required the court to vacate Wallace's prior conviction as provided for in the plea agreement. We are constrained to agree with the Commonwealth that "the law of the case doctrine" applies to bar further consideration of this issue.

The law-of-the-case doctrine is a rule under which an appellate court, on a subsequent appeal, is bound by a prior decision on a former appeal in the same court and applies to the determination of questions of law and not questions of fact . . . it designates the principle that if an appellate court has passed on a legal question and remanded the cause to the court below for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case.

Inman v. Inman, 648 S.W.2d 847, 849 (Ky. 1982).

Wallace was given ample opportunity to litigate this issue, and he did so, in his previous appeal.

A final decision of this Court, whether right or wrong, is the law of the case and is conclusive of the questions therein resolved. It is binding upon the parties, the trial court. . . .

¹ Our Court rendered an unpublished decision in Wallace's first appeal of this issue. 2005-CA-002589-MR.

Martin v. Frasure, 352 S.W.2d 817, 818 (Ky. 1961).

Accordingly, the Jefferson Circuit Court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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