

RENDERED: FEBRUARY 22, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000356-MR

DARRELL TAYLOR

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BRIAN C. EDWARDS, JUDGE
ACTION NO. 11-CR-002639

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND K. THOMPSON,
JUDGES.

CLAYTON, CHIEF JUDGE: Darrell Taylor appeals from the Jefferson Circuit
Court's denial of Taylor's motion to correct his sentence. Upon review, we affirm.

On September 1, 2011, the Jefferson County grand jury indicted
Taylor on the charge of receiving stolen property over \$500 (the 2011 Case).
Taylor entered into a guilty plea agreement with the Commonwealth of Kentucky

in which his two-year sentence was probated for five years. On November 22, 2011, the Jefferson Circuit Court entered a final judgment reflecting the foregoing sentence. In addition to the sentence he received in the 2011 Case, Taylor had previously received a five-year sentence regarding a separate 2009 case (the 2009 Case), which sentence had also been probated for a five-year period.

Taylor was subsequently arrested on January 25, 2012, and charged with murder, tampering with physical evidence, and being a convicted felon in possession of a handgun. Due to this new felony arrest, the Commonwealth filed a motion to revoke Taylor's probation in both the 2009 Case and the 2011 Case. The circuit court held a revocation hearing on December 14, 2012 and ultimately entered an order on February 18, 2013 officially revoking Taylor's probation in the 2011 Case. The order stated that Taylor had stipulated to violating the conditions of his probation and ordered that the two-year sentence imposed in the 2011 Case run consecutively with the five-year sentence imposed in the 2009 Case.

On December 15, 2016, almost four years after the circuit court entered the order revoking his probation, Taylor filed a motion to correct his sentence, claiming that his probation had never been revoked in the 2011 Case and that he therefore remained on probation status with regard to the 2011 Case. On January 11, 2017, the trial court entered a handwritten notation on the motion stating "Motion Considered and Denied" with the trial court's signature. On

February 10, 2017, Taylor tendered a notice of appeal from the trial court's January 11, 2017 order.

In his brief, Taylor again argues that his probation in the 2011 Case was never revoked. Under Kentucky law, however, “[t]he structure . . . for attacking the final judgment of a trial court in a criminal case is not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals[.]” *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). In *Gross*, the Kentucky Supreme Court further stated:

We hold that the proper procedure for a defendant aggrieved by a judgment in a criminal case is to directly appeal that judgment, stating every ground of error which it is reasonable to expect that he or his counsel is aware of when the appeal is taken.

Id. at 857.

In this case, not only is Taylor's assertion that his probation in the 2011 Case was never revoked demonstrably incorrect, but if Taylor felt that the circuit court had erred in failing to revoke his probation or that some other mistake with his sentence existed, he should have filed a direct appeal. He failed to do so. Therefore, the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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