

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001915-MR

RAYMOND HURT

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE BRIAN WIGGINS, JUDGE
ACTION NO. 15-CR-00046

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, DIXON AND GOODWINE, JUDGES.

GOODWINE, JUDGE: Raymond Hurt appeals from a Muhlenberg Circuit Court order entered April 12, 2017, denying a motion to correct his sentence. Finding no error, we affirm.

Hurt was indicted for trafficking in a controlled substance in the first degree and persistent felony offender in the first degree. As part of a plea

agreement, the Commonwealth recommended the trafficking charge be amended from first degree to second degree with a recommended sentence of five years, enhanced by five years for the persistent felony charge. Hurt pled guilty to trafficking in a controlled substance in the second degree and persistent felony offender in the first degree.

The trial court sentenced Hurt to “confinement in the penitentiary for five (5) years, enhanced five (5) years by reason of the persistent felony offender in the first-degree status, for a total of ten years.” The trial court entered its judgment and final sentencing order on April 14, 2015. Approximately two years later, Hurt filed a motion to correct his sentence under CR¹ 60.02, alleging his sentence was illegal because a “persistent felony offender (PFO) sentence cannot run consecutive with the principal offense”.

“Our standard of review of a trial court’s denial of a CR 60.02 motion is whether the trial court abused its discretion.” *Age v. Age*, 340 S.W.3d 88, 94 (Ky. App. 2011) (citing *Richardson v. Brunner*, 327 S.W.2d 572, 574 (Ky. 1959)).

Although Hurt relies on KRS² 532.080(1), and cites *Savage v. Commonwealth*, 2013-CA-001335-MR, 2014 WL 4377899 (Ky. App. Sept. 5,

¹ Kentucky Rules of Civil Procedure.

² Kentucky Revised Statutes.

2014) (affirming the trial court enhancing a sentence pursuant to a PFO), his argument is flawed. In *Savage*, we held:

“[I]f a jury finds a defendant is [or a defendant pleads guilty to being] a PFO, the defendant’s sentence for the underlying offense is **enhanced**.” *Commonwealth v. Derringer*, 386 S.W.3d 123, 126 (Ky. 2012) (emphasis added); *Kroth v. Commonwealth*, 737 S.W.2d 680, 681 (Ky. 1987) (“Once the status of persistent felony offender has been established, the defendant can receive enhanced punishment on each and every subsequent felony.”).

Id. Hurt incorrectly argues the trafficking sentence must run concurrent with a separate persistent felony sentence. Contrary to Hurt’s argument, KRS 532.080(6)(b) states:

If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.

Hurt pled guilty to an amended charge of trafficking in a controlled substance, second degree, a Class D felony. His five-year sentence was enhanced five years for a total of ten years.

On April 12, 2017, the trial court denied Hurt’s motion to correct his sentence concluding that as a first-degree persistent felon the minimum sentence he could receive was ten years. Clearly, there was no abuse of discretion in this case.

Thus, we affirm the Muhlenberg Circuit Court's denial of Hurt's motion to correct his sentence.

ALL CONCUR.

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