

RENDERED: APRIL 23, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 1999-CA-000441-MR

ALAN DAVID MANNING

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN D. MINTON, JR., JUDGE
ACTION NO. 95-CR-00247

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND BUCKINGHAM, JUDGES; AND MILLER, SENIOR
JUDGE.¹

BARBER, JUDGE: Appellant, Alan David Manning (Manning), appeals his probation revocation for possession of a firearm by a convicted felon. Manning pleaded guilty to the charge of possession of a firearm in 1995. Manning was charged with manslaughter in 1998, at which time his probation was revoked. We affirm the probation revocation.

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In his brief, Manning attempts to argue issues raised in the appeal of his manslaughter conviction. Manning fails to explain how he believes those issues, previously ruled upon by the Kentucky Supreme Court, relate to the revocation of probation. Manning's brief appears to be an attempt to improperly collaterally attack the separate conviction. As the Commonwealth notes, those issues have already been heard and ruled upon by the Kentucky Supreme Court in Manning v. Commonwealth, Ky., 23 S.W.3d 610 (2000). For that reason, we cannot address those issues herein.

The crime at issue in the present case is possession of a gun by a convicted felon. That crime is properly considered a separate offense. Jackson v. Commonwealth, Ky., 650 S.W.2d 250, 251 (1983). Facts already affirmed on appeal show Manning's possession and use of a firearm to commit manslaughter. Manning's appeal of those factual findings was unsuccessful. Manning cannot controvert those earlier findings in the present case. Manning has failed to show that the probation revocation was not in accordance with law. The judgment of the Warren Circuit Court is affirmed.

MILLER, SENIOR JUDGE, CONCURS.

BUCKINGHAM, JUDGE, CONCURS IN RESULT AND FURNISHES SEPARATE OPINION.

BUCKINGHAM, JUDGE, CONCURRING IN RESULT. Manning's probation was revoked because he was convicted of another crime (manslaughter) while on probation. His conviction was affirmed on his direct appeal to the Kentucky Supreme Court. As the majority opinion herein notes, Manning's arguments in this appeal are simply attempts to improperly collaterally attack the manslaughter conviction. In short, the circuit court did not err in revoking Manning's probation on the firearm charge based on his later conviction for manslaughter while on probation.

BRIEFS FOR APPELLANT:

Nancy Oliver Roberts
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Courtney J. Hightower
Assistant Attorney General
Frankfort, Kentucky