

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-002436-MR

MARCUM MCWHORTER

APPELLANT

v. APPEAL FROM LAUREL COUNTY CIRCUIT COURT  
HONORABLE RODERICK MESSER, JUDGE  
ACTION NO. 99-CR-00208

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: BARBER, GUIDUGLI, AND PAISLEY, JUDGES.

BARBER, JUDGE: Appellant Marcum McWhorter was convicted of four counts of trafficking in a controlled substance in a trial by jury. Counsel for McWhorter filed a brief pursuant to Anders v. California, 386 US 738, 18 L.Ed.2d 493 (1967), and withdrew from the case. McWhorter was given thirty days to file a brief on his own behalf, but did not file a brief. We affirm Judgment and sentence entered by the Laurel Circuit court on September 25, 2000.

The investigating officer testified that two informants on five occasions, each paid \$100 per buy, to purchase drugs from McWhorter. These transactions were recorded. Informant Collett

identified McWhorter's voice on the tapes, which were played for the jury. Defense counsel objected to the tapes being played for the jury, asserting that the tapes provided to the defendant had been garbled and difficult to understand, while the tapes played at trial were Acrysal clear.@ The trial court listened to both sets of tapes, and found that the difference in tape quality was not substantial, and did not prejudice McWhorter. No reversible error in the admission of the tapes has been shown.

The jury sentenced McWhorter to five years on each of the four counts, to be served concurrently. The trial court amended the sentence, requiring McWhorter to serve five years on each on the first two counts, and five years on each of the second two counts, with the sentences to be served consecutively, for a total of ten years. McWhorter objects to the Adoubling@ of his sentence. A trial court is not bound by the recommended sentence passed down by a jury. KRS 532.055; Nichols v. Commonwealth, Ky, 839 S.W.2d 263 (1992).

Based upon the foregoing, the judgment of the trial court is affirmed.

ALL CONCUR.

ANDERS BRIEF FOR APPELLANT:

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No Pro Se Brief for Appellant.

BRIEF FOR APPELLEE:

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