

RENDERED: JANUARY 24, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002468-MR

AND

NO. 2001-CA-002469-MR

ANTHONY ALBRITTON

APPELLANT

v. APPEALS FROM MARSHALL CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 90-CR-00092 & 91-CR-00088

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BAKER, GUIDUGLI, AND SCHRODER, JUDGES.

BAKER, JUDGE: Anthony Albritton brings these appeals from an October 16, 2001, order of the Marshall Circuit Court. We affirm.

In Marshall Circuit Court Action No. 90-CR-00092, Appellant was charged with capital murder, Kentucky Revised Statutes (KRS) 507.020, and with being a persistent felony offender in the first degree, KRS 532.080. Pursuant to a plea agreement with the Commonwealth, the charge of capital murder was

amended to manslaughter in the first degree, KRS 507.030, and the persistent felony offender charge was dismissed. The Commonwealth recommended a twenty-year sentence. On September 26, 1991, the circuit court entered a Judgment on Guilty Plea. Therein, appellant was adjudged guilty of first-degree manslaughter and sentenced to twenty years imprisonment.

In Marshall Circuit Court Action No. 91-CR-00088, Appellant was charged with possession of contraband, KRS 520.050, and with being a persistent felony offender in the first degree, KRS 532.080. Pursuant to a plea agreement with the Commonwealth, the charge of first degree persistent felony offender was amended to second degree persistent felony offender, KRS 532.080. As to sentencing, the Commonwealth recommended the following:

The Commonwealth recommends a five year sentence in the penitentiary. **The Commonwealth recommends a ten year sentence in the penitentiary to the amended charge of PFO 2nd degree. Said ten year sentence supersedes the sentence imposed under 91-CR-088 and shall run consecutively with the twenty-year manslaughter sentence under indictment 90-CR-092.** (Emphasis added.)

On November 13, 1991, the circuit court entered a Judgment on Guilty Plea. The court adjudged appellant guilty of promoting contraband and for being a persistent felony offender in the second degree. Appellant was sentenced to ten years imprisonment to run consecutively with the sentence imposed in Marshall Circuit Court Action NO. 90-CR-00092.

On September 6, 2001, appellant filed a "Motion for Concurrent Sentencing pursuant to KRS 532.110, KRS 532.030 and CR

60.02." Appellant sought to have his sentence in 91-CR-00088 to run concurrently with his sentence in 90-CR-00092. On October 16, 2002, the circuit court entered an order denying appellant's motion, thus precipitating this appeal.

Appellant contends that the circuit court committed reversible error by denying his Ky. R. Civ. P. (CR) 60.02 motion. Specifically, appellant contends:

During the sentencing phase, the Prosecutor and Trial Judge reference to the Kentucky Revised Statutes stating that the Court was prohibited from running Indictment No. 91-CR-0884, (a CLASS D OFFENSE) with Indictment No. 90-CR-092. This was a misrepresentation of the applicable sentencing statutes that caused a sentencing error

. . . .

The error was committed because the Trail [sic] Court was under the mistaken belief that it was prohibited from running the CLASS D offense concurrent with the higher offense pursuant to KRS 533.060.

Appellant's Brief p. 2. In essence, appellant argues that the circuit court erred in its interpretation of the law and seeks redress through CR 60.02.

It is well established that CR 60.02 will not provide relief for judicial errors or mistakes. See McMillen v. Commonwealth of Kentucky, Ky., 717 S.W.2d 508 (1986) (citing Roberts v. Osborne, Ky. 339 S.W.2d 442 (1960); James v. Hillerich & Bradsby Company, Ky. 299 S.W.2d 92 (1956)). This rule, of course, encompasses errors of law committed by the circuit court. City of Covington v. Sanitation District No. 1, Etc., Ky., 459 S.W.2d 85 (1970).

In his CR 60.02 motion, appellant has alleged the circuit court erroneously interpreted KRS 533.060. Thus, appellant argues that the circuit court committed an error of law. As appellant's ground for relief under CR 60.02 was based upon error of law, we must conclude that he has failed to demonstrate entitlement to relief under CR 60.02.

For the foregoing reasons, the order of the Marshall Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Anthony Albritton, Pro Se
Burgin, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky
Frankfort, Kentucky

William L. Daniel, II
Assistant Attorney General
Frankfort, Kentucky