

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000780-MR

SHAWN MOSLEY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
INDICTMENT NO. 93-CR-002206

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: DYCHE, McANULTY, AND SCHRODER, JUDGES.

DYCHE, JUDGE. In February 1994 Shawn Mosley entered pleas of guilty to five counts of wanton endangerment in the first degree. His sentences of two years on each count were ordered to run concurrently with each other for a total of two years' imprisonment. However, that sentence was run consecutively with another six year sentence received in another division of Jefferson Circuit Court.

Mosley did not file the within motion pursuant to RCr 11.42 until February 2002. He argues that this was timely as the Rule was amended in 1999, giving him three years after the effective date of the amended Rule. However, as the trial court noted, RCr 11.42 (10) was amended in 1994, making Mosley's filing deadline October 1, 1997. Palmer v. Commonwealth, Ky. App., 3 S.W.3d 763, 764 (1999). The trial court correctly dismissed Mosley's motion as untimely filed.

Moreover, even were we to accept Mosley's argument regarding timeliness, we would nonetheless affirm the trial court's order. Mosley's only other contention is that the indictment against him should have been dismissed. His grounds here do not merit discussion. Suffice it to say that he does not allege that, but for the alleged insufficiencies in the proceedings against him, he would have not entered pleas of guilty but rather insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985); accord Sparks v. Commonwealth, Ky. App., 721 S.W.2d 726, 727-728 (1986).

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Shawn Mosley, *Pro Se*
Manchester, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Elizabeth A. Heilman
Assistant Attorney General
Frankfort, Kentucky