

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000983-MR

CARLOS E. BROOKS

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 99-CR-002832 & 99-CR-002902

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BAKER AND JOHNSON, JUDGES.

EMBERTON, CHIEF JUDGE. Carlos Brooks entered an Alford¹ plea to illegal possession of cocaine and illegal possession of drug paraphernalia and was released on his own recognizance pending a scheduled July 31, 2000, sentencing hearing. As a part of his negotiated settlement, Brooks entered the plea in exchange for being released on his own recognizance, and if he appeared at the sentencing hearing, would receive concurrent four and twelve

¹ North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

month sentences with dismissal of the PFO² I charge. If he failed to appear, the agreement provided he would receive a four-year sentence on the possession charge, enhanced to eight years on the amended charge of PFO II. After Brooks failed to appear at the July sentencing hearing, he was arrested and a sentencing hearing was held on November 16, 2000. The circuit court denied Brooks' motion to withdraw his guilty plea and sentenced him to eight years' imprisonment.

On October 24, 2001, Brooks filed a CR³ 60.02 motion alleging that his enhanced eight-year sentence was a "miscarriage of justice." After his CR 60.02 motion was denied, on February 15, 2002, Brooks filed an RCr⁴ 11.42 motion, and on February 19, 2002, sought to amend the pleading to include RCr 10.26. As he did in his CR 60.02 motion, Brooks contended that the circuit court abused its discretion when it sentenced him to eight years and that he should have been able to withdraw his guilty plea. The circuit court again rejected both contentions.

This is Brooks' second attempt to collaterally attack the judgment, the first being pursuant to CR 60.02 and the last pursuant to RCr 11.42 and RCr 10.26. Kentucky law does not

² Persistent Felony Offender.

³ Kentucky Rules of Civil Procedure.

⁴ Kentucky Rules of Criminal Procedure.

permit more than one collateral attack on a criminal judgment.⁵
The trial court previously found, in its order denying CR 60.02 relief, that Brooks had no right to withdraw his guilty plea and that his guilty plea and sentence were valid. He is not entitled to relitigate these issues by retitling his motion as an RCr 11.42 motion or an RCr 10.26 motion.

The order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Carlos Brooks, Pro Se
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BRIEF FOR APPELLEE:

Albert B. Chandler III
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David A. Smith
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⁵ Crick v. Commonwealth, Ky., 550 S.W.2d 534 (1977).