

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001917-MR

JEFFREY LYNN GIBBS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS MCDONALD, JUDGE  
INDICTMENT NO. 97-CR-001090

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: BUCKINGHAM, DYCHE, AND JOHNSON, JUDGES.

DYCHE, JUDGE. Jeffrey Lynn Gibbs appeals from an order and judgment of the Jefferson Circuit Court denying his motion to vacate his "unlawful and unauthorized" sentence, and imposing a corrected sentence. We affirm.

On December 18, 1997, a jury found Gibbs guilty of Murder, First Degree Robbery, and Tampering with Physical Evidence. Gibbs waived jury sentencing, and by agreement with the Commonwealth consented to a sentence of thirty years on the

Murder conviction; twenty years on the First Degree Robbery conviction, enhanced, due to his status as a Persistent Felony Offender (PFO), to thirty years; and five years, enhanced for the same reason, to ten years on the Tampering with Physical Evidence conviction.

Unfortunately, when the written judgment was entered in the court record, it did not accurately reflect Gibbs's agreed sentence, but indicated that the Murder conviction was enhanced due to the PFO status, and ignored the Robbery conviction altogether. On motion of the Commonwealth, the sentence was "corrected" to indicate his status as a PFO, but again did not accurately reflect the sentence. Gibbs appealed the denial of his CR 60.02 motion to vacate his sentence, and this court affirmed.

Gibbs filed the current motion on May 29, 2002, again asking the trial court to vacate his unlawful and unauthorized sentence. The trial court considered the motion, and did find clerical errors in the judgment. It found, correctly, that the amended judgment did not correctly reflect the agreement of the parties, or the proceedings in the court. The court cited Cardwell v. Commonwealth, Ky., 12 S.W.3d 672 (2000), for the proposition that the trial court can correct clerical errors in its judgments at any time, and of its own motion. The court then corrected the judgment, and this appeal followed.

Gibbs first argues that it was error for the trial court to enhance the Murder conviction due to his PFO status. We agree; the trial court however, did not enhance the Murder sentence, but merely imposed what was agreed upon by Gibbs and the Commonwealth.

Gibbs next argues that the trial court was in error in amending its judgment more than ten days following its entry; he finally argues that the corrections were substantive rather than clerical. We disagree. Cardwell permits amendment at any time for clerical reasons. Viers v. Commonwealth, Ky., 52 S.W.3d 527 (2001), indicates that an amendment to conform to the oral sentence is clerical; in this case, the amendment does that and also embodies that agreement of Gibbs and the Commonwealth.

The order and judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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