

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001948-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE GEOFFREY P. MORRIS, JUDGE  
ACTION NO. 00-CR-001726

KERRY ROBINSON

APPELLEE

OPINION  
VACATING  
\*\* \*\* \* \* \* \* \*

BEFORE: BARBER, McANULTY, AND TACKETT, JUDGES.

TACKETT, JUDGE: The Commonwealth of Kentucky appeals from an order of the Jefferson Circuit Court amending a final order of dismissal without prejudice, in a criminal case against Kerry Robinson. The court below, on Robinson's motion, amended the order to dismiss the matter with prejudice. The Commonwealth argues that the circuit court had no jurisdiction to modify the order, some 14 months after its entry. We agree and vacate the

order of the circuit court, and reinstate the previous order dismissing the case without prejudice.

Robinson was indicted in 2000 on charges of first-degree rape, first-degree sodomy, and first-degree sexual abuse, stemming from incidents involving an eight-year-old child. Prior to trial, the victim died unexpectedly, and the Commonwealth was unable to proceed to trial. In March 2001, the Commonwealth requested and received a voluntary dismissal of the charges without prejudice, in the event that it was able to obtain other evidence against Robinson.

Fourteen months later, in May 2002, Robinson moved to amend the order to a dismissal with prejudice. The circuit court granted the motion over the Commonwealth's objection. This appeal followed. Robinson filed no brief with this Court, and so we accept the Commonwealth's statement of the case as correct.

The Commonwealth's primary argument centers on whether the circuit court lost jurisdiction to modify its own order. Under Rule of Civil Procedure (CR) 59.05, which also applies to criminal matters, a "motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than 10 days after the entry of the final judgment."

Robinson's motion was not timely, and should not have been granted by the circuit court. The Commonwealth correctly

asserts that the circuit court lost jurisdiction over the matter ten days after the order of dismissal was entered. As we are deciding the case based on this argument, we need not address the Commonwealth's separation of powers argument. The decision of the Jefferson Circuit Court is therefore vacated, and the March 2001 order reinstated.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE:

Albert B. Chandler, III  
Attorney General

Jeanne D. Anderson  
Assistant Attorney General  
Louisville, Kentucky