

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-002025-MR

LANDON NIGUEL PRICE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
ACTION NO. 98-CR-00889

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, GUIDUGLI, AND TACKETT, JUDGES.

BUCKINGHAM, JUDGE: Landon Niguel Price appeals from an order of the Fayette Circuit Court denying his Motion to Correct Sentence filed pursuant to CR<sup>1</sup> 60.02. We affirm.

Price was convicted by a jury in the Fayette Circuit Court of two counts of trafficking in a controlled substance in the first degree. The jury also found him to be a persistent felony offender in the first degree, and it enhanced his

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<sup>1</sup> Kentucky Rules of Civil Procedure.

sentences. The jury recommended sentences of 15 years on each charge, and it further recommended that the sentences run consecutively for a total sentence of 30 years. Price waived a presentence investigation report, and the court sentenced him to 30 years in prison in accordance with the jury's verdict.

The Kentucky Supreme Court affirmed Price's convictions on direct appeal. However, the court determined that the 30-year sentence violated KRS<sup>2</sup> 532.110(1)(c) and that the maximum sentence allowed was 20 years. Thus, the court remanded the case to the Fayette Circuit Court with directions to impose a sentence which did not exceed 20 years.

On January 23, 2001, the circuit court rendered an amended judgment sentencing Price to 20 years in prison. There is no indication that any presentence investigation report was filed for the court's consideration. Price did not appeal from the amended judgment.

On August 12, 2002, Price filed a Motion to Correct Sentence pursuant to CR 60.02. Therein, he argued that he had been entitled to be sentenced by a jury and that the court had erred when it resentenced him to 20 years in prison in the amended judgment. In support of his argument, Price cited Wilson v. Commonwealth, Ky., 765 S.W.2d 22 (1989). He also

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<sup>2</sup> Kentucky Revised Statutes.

argued that the court improperly sentenced him because it did not first require a presentence investigation report. The court denied the motion, and this appeal by Price followed.

The circuit court correctly denied Price's motion. Had Price wanted to challenge the amended judgment and sentence of 20 years, he should have filed a direct appeal. CR 60.02 is "for relief that is not available by direct appeal and not available under RCr 11.42." Gross v. Commonwealth, Ky., 648 S.W.2d 853, 856 (1983). Because Price could have sought relief on direct appeal, he was precluded from seeking relief pursuant to CR 60.02.

Therefore, the order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Landon Niguel Price, *Pro Se*  
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General of Kentucky

Gregory C. Fuchs  
Assistant Attorney General  
Frankfort, Kentucky