

RENDERED: MAY 16, 2003; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-002042-MR

STEPHEN M. SAMUELS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS MCDONALD, JUDGE  
INDICTMENT NO. 96-CR-001974 AND 99-CR-000912

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND DYCHE, JUDGES.

BARBER, JUDGE: Stephen M. Samuels ("Samuels") appeals from an order of the Jefferson Circuit Court denying his motion, filed pursuant to Kentucky Rules of Criminal Procedure (CR) 60.02(e) and CR 60.02(f), to modify or vacate his sentence of imprisonment. After reviewing the issues raised by Samuels, the record and the applicable law, we affirm.

On April 29, 1997, Samuels entered a plea of guilty to numerous cocaine related charges contained in two indictments<sup>1</sup>. In a judgment entered June 11, 1997, Samuels was sentenced to a total of one year in prison on these charges. This one-year prison sentence, however, was probated for five years.

The Jefferson County Grand Jury, on April 8, 1999, indicted Samuels for first-degree burglary, kidnapping and first-degree rape. Samuels entered a guilty plea to amended charges of second-degree burglary, unlawful imprisonment in the first degree and criminal attempt to commit rape in the first degree. The trial court, on June 22, 1999, sentenced Samuels to a total of seven years imprisonment on these charges. As a result of this judgment of conviction, the trial court revoked Samuel's probation on October 18, 1999, and further ordered Samuels to begin serving the one-year sentence.

On March 27, 2002, Samuels filed his CR 60.02 motion to amend, modify or vacate his sentence. In his motion for post-conviction relief, Samuels asserted that, upon his arrival at the Western Kentucky Correctional Complex, he discovered that his two prison sentences were calculated to run consecutively.

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<sup>1</sup> Samuels was charged in indictment number 96-CR-1974-12 with one count each of illegal possession of a controlled substance I (cocaine), illegal use or possession with intent to use drug paraphernalia and operation of a motor vehicle by a person whose operator's license has been revoked, suspended, cancelled or denied. In indictment number 96-CR-2838, Samuels was charged with illegal possession of a controlled substance I, illegal use or possession with intent to use drug paraphernalia and public intoxication.

Samuels argued that the seven-year sentence he received should run currently with the prior one-year sentence because those judgments were silent as to how the sentences were to run. In support of this assertion, Samuels argued that, pursuant to Kentucky Revised Statutes (KRS) 532.110(2), his seven-year prison sentence must run concurrently with his one-year sentence. Moreover, Samuels also argued that KRS 532.110(2) should be the controlling statute because it was re-enacted later than KRS 533.060(2). The trial court determined that KRS 533.060(2) controls because this statute is more specific and expressly mandates that the two sentences must be served consecutively because Samuels committed the new offenses while on probation. Thus, the court entered an order denying the CR 60.02 motion. This appeal followed.

On appeal, Samuels argues that the trial court erred by denying his CR 60.02 motion. In support of this argument, Samuels asserts that KRS 532.110(1), which allows for concurrent sentences when multiple sentences of imprisonment are imposed, controls over KRS 533.060(2) because the former was recently amended. Samuels relies on the general rule of statutory construction that the courts must presume that the Legislature intended to effect a change on the law by amending a statute. Sanders v. Pierce, Ky. App., 979 S.W.2d 457, 460 (1998). We find Samuels's assertions to be totally lacking in merit.

KRS 533.060(2) provides as follows:

When a person has been convicted of a felony and is committed to a correctional detention facility and released on parole or has been released by the court on probation, shock probation, or conditional discharge, and is convicted or enters a plea of guilty to a felony committed while on parole, probation, shock probation, or conditional discharge, the person shall not be eligible for probation, shock probation, or conditional discharge and the period of confinement for that felony shall not run concurrently with any other sentence.

It is undisputed in this matter before us that Samuels was on parole when he committed the offenses for which he was indicted on April 8, 1999. Further, it is undisputed that the judgments entered by the trial court sentencing Samuels to periods of imprisonment failed to specify how the two prison sentences should run.

Samuels relies on KRS 532.110(2) in support of his argument that his prison sentences must run concurrently. The version of KRS 532.110(2) that was in effect at the time Samuels submitted his CR 60.02 motion, provides:

If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve.

Our research reveals that a panel of this Court has already decided this issue. In White v. Commonwealth, Ky. App., 32 S.W.3d 83 (2000), this Court determined that KRS 532.060(2)

has primacy over KRS 532.110. In fact, “[l]ong-existing case law interpreting KRS 532.110 and KRS 533.060(2) has clearly established the primacy of the later statute.” White, 32 S.W.3d at 86. Moreover, this Court recognized that the General Assembly did not amend either statute with clear language evidencing any intent to change or overrule the long-standing interpretation of these statutes. Id. Accordingly, the trial court properly rejected Samuels’s contention that the re-enactment of KRS 532.110 in 1998 allows the trial court discretion to impose a concurrent sentence for an offense he committed while on probation.

In this matter currently before us, the record clearly indicates that Samuels committed new criminal offenses while on probation for his previous drug-related convictions. Based upon precedent established in White, KRS 533.060(2) not only applies, but mandates that Samuels must serve his two prison sentences consecutively for a total of eight years imprisonment.

The standard for review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion. Brown v. Commonwealth, Ky., 932 S.W.2d 359, 362 (1996). A movant is not entitled to a hearing on a CR 60.02 motion unless he “affirmatively alleges facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.” McQueen v. Commonwealth, Ky., 948

S.W.2d 415, 416 (1997), cert. denied, 521 U.S. 1130, 117 S. Ct. 2535, 138 L. Ed. 2d 1035 (1997) (quoting Gross v. Commonwealth, Ky., 648 S.W.2d 853, 856 (1983)). Samuels has failed to present any facts or legal grounds sufficient to invalidate his sentence. Thus, the trial court did not abuse its discretion in denying his CR 60.02 motion without a hearing.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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