

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002241-MR

WILLIAM VIRGIL

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE LEONARD L. KOPOWSKI, JUDGE
ACTION NO. 87-CR-00199

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, MINTON, AND TAYLOR, JUDGES.

BUCKINGHAM, JUDGE: William Virgil was convicted in the Campbell Circuit Court in 1988 of a brutal murder and was sentenced to 70 years in prison. His conviction was upheld on appeal by the Kentucky Supreme Court. See Virgil v. Commonwealth, No. 88-SC-844-MR, rendered May 24, 1990 (not to be published).

Postconviction motions pursuant to RCr¹ 11.42 were later made and denied.

¹ Kentucky Rules of Criminal Procedure.

On August 27, 2002, Virgil filed a petition for declaration of rights in the circuit court pursuant to KRS² 418.040. The petition alleged that he had been convicted because of perjured testimony, that he had therefore been denied a fair trial, and that his conviction should be vacated or reversed. In his petition Virgil focused on the trial testimony of Joe Womack who testified that Virgil told him while they were cellmates in an Ohio prison that he had committed the crime. The circuit court denied the motion in an order entered on October 1, 2002, and this appeal by Virgil followed.

KRS 418.040 states as follows:

In any action in a court of record of this commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

"Questions already thus adjudicated by a court having jurisdiction of the subject-matter and the parties, cannot thereafter be the subject between such parties and their privies of 'an actual controversy,' within the meaning of those terms in sections 1 and 6 of the Declaratory Judgment Act." Shearer & Ramsey v. Backer, 207 Ky. 455, 269 S.W. 543, 545 (1925).

² Kentucky Revised Statutes.

The questions surrounding Womack's testimony have been resolved previously during this litigation. Thus, there is no "actual controversy" to be resolved. Therefore, the circuit court correctly determined that Virgil may not seek relief under KRS 418.040.

The order of the Campbell Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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