

RENDERED: September 19, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000067-MR

CRAIG ALAN YORK

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 95-CR-002427

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: DYCHE, JOHNSON AND PAISLEY, JUDGES.

PAISLEY, JUDGE. This is an appeal from an order entered by the Jefferson Circuit Court denying appellant's motion for CR 60.02 relief. Appellant Craig Alan York contends that the trial court erred by failing to provide findings of fact and conclusions of law to support the denial of his motion, and by imposing a sentence which exceeds the length permitted by KRS 532.110(1)(c) and KRS 532.080(6)(b). We affirm.

On September 15, 1995, York physically assaulted his ex-girlfriend, attempted to set her house on fire, destroyed the adjacent landscaping, and seriously damaged her car. On April 16, 1996, York pleaded guilty to third degree arson, third degree burglary, first degree criminal mischief, and fourth degree assault. He was sentenced to consecutive terms of five years each on the three felony charges, as well as a concurrent term of twelve months on the assault charge, for a total of fifteen years. However, the court ordered York to be placed on probation for a period of five years. Unfortunately, York was arrested eight months later for possession of cocaine and third degree criminal trespass. His probation was revoked and he was ordered to serve his fifteen-year sentence.

Some six years later, while he was still incarcerated, York filed a motion seeking CR 60.02 relief. York asserted that his aggregate sentence of fifteen years exceeded the maximum authorized limit under KRS 532.080. York also requested the trial court to make complete findings of fact and conclusions of law in accordance with CR 52.01. The court denied the CR 60.02 motion without specifying the grounds for its decision, and York was subsequently paroled from prison.

As a preliminary matter, we note that even though York entered a guilty plea, he could have filed a direct

appeal challenging the court's jurisdictional authority to impose the sentence below, as issues concerning subject matter jurisdiction may not be waived. See Gaither v. Commonwealth, Ky., 963 S.W.2d 621, 622 (1997). However, appellant did not file such an appeal, and he is clearly outside of the one-year limitations period applicable to motions for relief filed pursuant to CR 60.02(a), (b) or (c). Moreover, appellant has provided no explanation on appeal as to why he waited more than six years from the date of his sentencing before filing his motion for CR 60.02 relief.

In any event, it is clear that appellant is not entitled to relief as to his claim that the trial court erred by failing to set out specific findings and conclusions when denying his motion for CR 60.02 relief. Indeed, CR 52.01 specifically provides that "[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41.02." As the denial of CR 60.02 relief does not fall within the category of those decisions which require the entry of written findings and conclusions, the trial court did not err by failing to make such an entry.

Further, there is no merit to appellant's contention that the trial court erred by imposing consecutive sentences which totaled fifteen years, even though he asserts that he should have received a maximum

sentence of ten (10) years. KRS 532.110(1) states in pertinent part:

When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous sentence of probation or conditional discharge has been revoked, the multiple sentences shall run concurrently or consecutively as the court shall determine at the time of sentence.

Limitations on the court's discretion are imposed by KRS 532.110(1)(c), which provides in part that "[t]he aggregate of consecutive indeterminate terms shall not exceed in maximum length the longest extended term which would be authorized by KRS 532.080 for the highest class crime for which any of the sentences is imposed." The underlying policy is that "a multiple offender should be punished at the same level of severity as a persistent felony offender The statute benefits the offender by shielding him or her from an endless accumulation of consecutive sentences." Myers v. Commonwealth, Ky., 42 S.W.3d 594, 597 (2001). As stated in Commonwealth v. Durham, Ky., 908 S.W.2d 119, 121 (1995),

KRS 532.110(1) requires that KRS 532.080 be used to establish the maximum aggregate sentence for a person convicted of multiple offenses, without regard to whether the penalties for those offenses have been enhanced. When KRS 532.080 is applied to determine the maximum aggregate penalty, as opposed to being used to enhance a penalty, the appropriate reference is in a case where

the underlying felonies are Class D or C felonies is subsection (6)(b)

KRS 532.080(6)(b) in turn provides:

If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years. (Emphasis added.)

Third degree arson, third degree burglary, and first degree criminal mischief are all classified as Class D felonies. See KRS 513.040, 511.040 and 512.020. The longest enhanced term authorized by KRS 532.080(6)(b) for a Class D felony is twenty years. As it follows that the maximum aggregate length of the consecutive terms to which York could have been sentenced under KRS 532.110(1)(c) was twenty years, the fifteen-year sentence imposed by the trial court fell well within the statutory limit.

Simply put, there is no merit to York's specific claim that his aggregate sentence of fifteen years exceeded the statutorily-authorized maximum sentence by five years. Although York stated in his original CR 60.02 motion that at the time of his sentencing there was a ten-year statutory limit on his sentence, and that such limit was subsequently raised by 1998 amendments to the current maximum of ten to twenty years, a comparison of KRS 532.080 and KRS 532.110 shows that there have been no changes in the relevant statutory language between the date of the crimes and the present.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Craig Alan York, pro se
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Louis F. Mathias, Jr.
Assistant Attorney General
Frankfort, Kentucky