

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000626-MR

COREY JOHNSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
ACTION NO. 96-CR-002406

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: McANULTY AND SCHRODER, JUDGES; AND HUDDLESTON, SENIOR
JUDGE.¹

SCHRODER, JUDGE. This is an appeal from an order of the
Jefferson Circuit Court denying the appellant's pro se motion
for relief pursuant to CR 60.02. Because the appellant has
failed to provide this Court with a sufficient record upon which
to base appellate review, we affirm.

¹ Senior Judge Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In 1996, Louisville Police arrested Corey Johnson for trafficking a controlled substance, crack cocaine. A grand jury returned an indictment, and Mr. Johnson later pled guilty to the charge. The court ordered Mr. Johnson to serve five years for the drug trafficking charge, plus an additional year for flagrant non-support. Mr. Johnson was paroled, and later arrested for escape, assault in the second degree, and tampering with physical evidence. Mr. Johnson was sentenced to thirteen years for the escape charge, thirteen years for the assault in the second degree charge, and ten years for the tampering with physical evidence charge.

Mr. Johnson filed this motion pursuant to CR 60.02, seeking amendment to his sentence. Mr. Johnson asserts that the judgment for his original charge - trafficking a controlled substance - is final and therefore may not be used in calculating the sentences for his later charges of escape, assault, and tampering with evidence. In essence, Mr. Johnson seems to be arguing that the three subsequent sentences were not properly merged with the remaining time for his original, drug trafficking charge. According to Mr. Johnson, this error results in an unlawfully extended prison stay, and a violation of his due process and equal protection rights.

A review of the briefs submitted by Mr. Johnson and the Commonwealth seem to support the conclusion that Mr.

Johnson's claim is without merit. However, meaningful review of the arguments is impossible, as this Court was not provided with a sufficient record. Absent more information concerning the length of Mr. Johnson's longest unexpired sentence, this Court cannot determine whether the various sentences were properly merged. It is the duty of the appellant to present a complete record for appellate review. Commonwealth v. Thompson, Ky., 697 S.W.2d 143 (1985). This Court must assume that any omissions or information absent from the record supports the findings of the trial court. Id.

Accordingly, the order of the Jefferson Circuit Court denying Mr. Johnson's CR 60.02 motion must be affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Corey Johnson, pro se
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III
Attorney General

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