

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002764-MR

JERRY LEE BRANSCUM

APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE DANIEL J. VENTERS, JUDGE
ACTION NO. 91-CR-00017

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, KNOPF, AND TACKETT, JUDGES.

TACKETT, JUDGE: Jerry Branscum appeals from an order of the Pulaski Circuit Court denying his motion to correct an alleged sentencing error. Branscum argues that the thirty year sentence, which he accepted as part of a plea bargain to several sexual offenses, exceeds the maximum sentence of twenty years' imprisonment allowed by law. The trial court declined to address the merits of his contention because Branscum has already raised this exact issue in two previous motions. This court has already rendered two opinions deciding the issue against Branscum; therefore, we affirm the trial court on the

basis that Branscum is attempting to repeatedly litigate an issue previously decided against him.

In 1991, Branscum was indicted on two counts of first-degree rape, two counts of first-degree sodomy, and ten counts of first-degree sexual abuse. These crimes involved a minor victim, aged ten. The Commonwealth offered to amend some of the charges and dismiss others if Branscum would agree to plead guilty and accept a sentence of thirty years' imprisonment. Branscum pled guilty to two counts of second-degree rape, two counts of second-degree sodomy and two counts of first-degree sexual abuse in exchange for the agreed upon sentence. He filed his first Kentucky Rule of Criminal Procedure (RCr) 11.42 motion to vacate his sentence, arguing ineffective assistance of counsel, in 1995. The trial court denied the motion and we affirmed that decision in an unpublished opinion, 96-CA-001574.

Next, Branscum filed a motion to correct his sentence pursuant to Kentucky Rule of Civil Procedure (CR) 60.02(f). He argued that Kentucky law authorized a maximum sentence of twenty years' imprisonment for the offenses to which he pled guilty. The trial court treated this motion as a successive RCr 11.42 motion and denied it. On appeal, Branscum argued for leniency due to his *pro se* status, but we found no such exception existed to the rule forbidding successive RCr 11.42 motions. (1998-CA-002246) In 2000, Branscum filed a second motion to correct his

sentence, this time styling it a motion for relief under RCr 11.42. The trial court overruled the motion because the issue had already been decided upon by the Court of Appeals. We affirmed in another unpublished opinion, 2001-CA-000920. Branscum's current motion to correct his sentence cites RCr 10.26, the palpable error rule, as grounds for relief. The trial court's brief order denies his request because the issue has already been litigated.

Branscum has appealed to this court arguing that the trial court's original order sentencing him to thirty years' imprisonment contains a palpable error because the maximum sentence allowed by law is twenty years. Also, he contends that the trial court and the Court of Appeals have never addressed the merits of his argument since both courts have repeatedly based their decisions against him on the rule against successive collateral attacks. Branscum may be correct in arguing that no court has determined whether the maximum sentence for his convictions is twenty years or thirty years. Regardless, this court has already decided twice that Branscum is not entitled to raise this issue in successive post conviction proceedings. Those decisions are binding on Branscum and on this court. Thomas v. Commonwealth, Ky., 931 S.W.2d 446 (1996). Because Branscum has now raised this issue three times, we hold that the

trial court correctly decided that it could not consider any corrections to his sentence.

The decision of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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