

RENDERED: AUGUST 19, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001269-MR

FRED TAYLOR, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 160118-16

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND JOHNSON, JUDGES; MILLER, SENIOR JUDGE.¹

BARBER, JUDGE: Appellant, Fred Taylor Jr. (Taylor), appeals Pro Se the Jefferson Circuit Court's denial of his motion pursuant to CR 60.02(f). We affirm the trial court's ruling.

Taylor was accused of stealing credit cards from the complaining witness. The cards were worth more than \$100 each

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

at the time they were taken, but were subsequently revoked. Taylor pleaded guilty to three counts of receiving stolen property, over \$100, in 1978. His sentence was suspended, and he was granted probation. In 1979, Taylor's probation was revoked, and he was ordered to serve twelve years. Taylor was subsequently convicted of two counts of burglary in the first degree for a separate offense. Because of his status as a persistent felony offender, Taylor was sentenced to serve thirty years on each burglary count. The earlier twelve-year sentence was to run consecutively with the sixty-year sentence.

Taylor filed a motion pursuant to CR 60.02, and a request for an evidentiary hearing. The motion and request for hearing were denied by the trial court. Taylor claims that he has a due process right to a hearing, asserting that the evidence was insufficient to support the judgment against him and that additional evidence was required. The trial court denied the motion for evidentiary hearing. The court found that the record on appeal was sufficient to base a ruling upon, and that no evidentiary hearing was necessary. The Commonwealth failed to support the trial court's ruling on appeal, but review of the record shows that the denial of the request for evidentiary hearing does not constitute grounds for reversal. Where the record in the case is sufficient to provide the necessary evidence, no evidentiary hearing is required. Sanders

v. Commonwealth, 89 S.W.3d 380, 385 (Ky. 2002). Taylor raised no issues on appeal that the record fails to address. No reversible error has been shown in the court's denial of the request for evidentiary hearing.

Taylor asserted in his motion before the trial court that the Commonwealth failed to prove all elements of the charges against him. Kentucky law holds that actions pursuant to CR 60.02 are addressed to the discretion of the trial court, and that "exercise of that discretion will not be disturbed on appeal except for abuse." Brown v. Commonwealth, 932 S.W.2d 359, 362 (Ky. 1996). Taylor claims that the evidence against him was insufficient. A knowing and voluntary plea of guilty waives most defenses to a sentence imposed. Johnson v. Commonwealth, 120 S.W.3d 704, 706 (Ky. 2002). Taylor did not show that the trial court's ruling was an abuse of discretion. For this reason, we affirm the trial court's ruling on the binding nature of the guilty plea.

As his second ground for reversal of the circuit court's denial of his motion pursuant to CR 60.02, Taylor argues that the provisions of KRS 532.110 and KRS 533.060 are inconsistent, such that his sentence should be set aside. The trial court ruled that the statutes were not inconsistent and that the sentence should not be set aside. We affirm the trial court's ruling based upon applicable caselaw.

Taylor asserts that Fryrear v. Parker, 920 S.W.2d 519 (Ky. 1996), requires retroactive application of KRS 532.110 to make it improper to require the twelve-year sentence to run consecutively with the sixty-year sentence. KRS 532.110 allows the court discretion in determining whether sentences should run concurrently or consecutively, and mandates that the maximum sentence shall not exceed seventy (70) years. KRS 533.060(2) mandates consecutive rather than concurrent sentences for offenses committed while the defendant is awaiting trial, and constitutes a more specific statute than KRS 532.110. Devore v. Commonwealth, 662 S.W.2d 829, 831 (Ky. 1984). KRS 533.060 provides an express exception to the prohibition on excessively lengthy aggregate sentences found in KRS 532.110. Page v. Commonwealth, 149 S.W.3d 416, 422 (Ky. 2004).

As a general rule, when two statutes are in conflict with one another, the latter statute controls. Brewer v. Commonwealth, 922 S.W.2d 380 (Ky. 1996). Taylor contends that as KRS 532.110 was amended in part in 1998, it should be the latter statute, and should control for that reason. This issue has been addressed by this Court, which held that the partial reenactment of KRS 532.110 did not evidence legislative intent to have that statute control over KRS 533.060. See: White v. Commonwealth, 32 S.W.3d 83, 85 (Ky.App. 2001). For this reason,

Taylor's argument must fail. The ruling of the Jefferson
Circuit Court is affirmed.

ALL CONCUR.

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