

RENDERED: MARCH 31, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001859-MR

DOUGLAS ALEXANDER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 04-CR-00402

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

TACKETT, JUDGE: Douglas Alexander appeals from the judgment of the Fayette Circuit Court entered on a conditional guilty plea to charges of possession of a methamphetamine precursor, possession of drug paraphernalia and being a persistent felony offender in the second degree. Counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), wherein he stated that he could find no appealable issue and requested additional time to allow his client to file a supplemental pro se brief if he chose to do so. Alexander has filed no supplemental brief. The sole issue presented on appeal is whether the court

correctly denied Alexander's motion to dismiss the persistent felony offender count because the prior offense was the subject of a not-yet-completed diversion. We affirm.

The record shows that Alexander had accepted a diversion agreement to a felony charge in Hardin County, but had not completed the diversion program when he was charged with these offenses. As diversion requires a guilty plea, and case law shows that a guilty plea even without a final judgment is a "conviction", Commonwealth v. Reynolds, 365 S.W.2d 853 (Ky. 1963), Grace v. Commonwealth, 915 S.W.2d 754 (Ky. App. 1996), the circuit court denied Alexander's motion to dismiss that charge. The Kentucky Supreme Court has held that a diverted offense, where the diversion program is not complete, can be the predicate for a persistent felony offender charge. Thomas v. Commonwealth, 95 S.W.3d 828, 830 (Ky. 2003). Therefore, the circuit court correctly denied the motion.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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