

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-002000-MR

RODNEY PEVELER

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
INDICTMENT NO. 00-CR-00106

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

DYCHE, JUDGE: On August 28, 2000, Rodney Peveler was convicted, by his own plea of guilty, of the offense of manufacturing methamphetamine in violation of KRS 218A.1432. At the plea proceeding, Peveler acknowledged that he was guilty of the offense, that he had discussed the crime and its elements with his attorney, and that he was pleading guilty voluntarily. On September 11, 2000, he was sentenced to ten years' confinement.

On December 14, 2000, Peveler filed a motion for post-conviction relief pursuant to RCr 13.04, CR 60.02 and CR 60.03, challenging the constitutionality of the statute. This motion was denied on December 14, 2000.

On August 20, 2004, Peveler filed yet another motion for relief from his conviction. This second motion was based on the holding of Kotila v. Commonwealth, 114 S.W.3d 226 (Ky. 2003), cert. denied, 540 U.S. 1198 (2004), which held that in order to sustain a conviction under the statute, the government had to prove that a defendant was in possession of *all* of the ingredients or *all* of the equipment to manufacture the drug.<sup>1</sup> Peveler argued in his motion that he did not possess *all* of either, and was therefore entitled to relief from his conviction. The trial court denied his motion, holding that his attack was on the sufficiency of the evidence, and not a proper subject for relief under CR 60.02.

Peveler argues on appeal that his challenge is not a sufficiency of the evidence matter; it is that he did not, and could not, under Kotila, violate the statute. We are unable to differentiate this argument from sufficiency of the evidence, and therefore affirm the trial court.

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<sup>1</sup> Kotila has since been superceded by statute. In 2005, the General Assembly amended KRS 218A.1432(1)(b) to make it unlawful for a person to possess two or more of the chemicals or pieces of equipment to manufacture the drug.

There is an additional reason we would affirm. CR 60.02(e) states that a challenge to a judgment must be brought within a reasonable time. As set out above, Peveler waited more than a year after Kotila was decided, and almost four years after his conviction. This is not a reasonable time.

The order of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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