

RENDERED: MARCH 3, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court Of Appeals

NO. 2005-CA-000077-MR

JANE ANN BARKSDALE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 02-CR-01196-002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

KNOPF, JUDGE: By final judgment entered June 24, 2003, the Fayette Circuit Court convicted Jane Barksdale, pursuant to her guilty plea, of felony theft by unlawful taking,¹ misdemeanor receiving stolen property,² and possession of burglar's tools.³

¹ KRS 514.030(2).

² KRS 514.110(3).

³ KRS 511.050.

Barksdale was sentenced as a second-degree persistent felon to seven years in prison.⁴ In March 2004, she moved pro se for relief from that judgment. She alleged that prior to her plea her indictment had been dismissed and argued that constitutional protections against double jeopardy barred her subsequent conviction and that her retained counsel's failure to raise the dismissal issue amounted to ineffective assistance. The trial court denied the motion by order entered December 3, 2004. It is from that order that Barksdale has appealed. We affirm.

Barksdale was arrested in October 2002 when she and two companions were caught shoplifting from a Dillard's department store in Lexington. At the time, Barksdale was on probation for a federal drug-trafficking offense. She was arraigned in Fayette District Court for the shoplifting-related offenses and was released on bail when her sister, Edna Barksdale, posted a \$10,200.00 bond. About a week after posting the bond, Edna assigned any refundable portion of it to Barksdale's Kentucky attorney. Because the charges against Barksdale included felonies, the matter was waived to the Fayette Circuit Court, where an indictment was issued on November 18, 2002. In the meantime, federal authorities arrested Barksdale for having violated the terms of her probation and, in January 2003, committed her to the Carswell

⁴ KRS 532.080.

Federal Detention Center in Ft. Worth, Texas. In April 2003, Barksdale was returned to Kentucky to face the Fayette County indictment. She pled guilty to amended charges on May 30, 2003.

Apparently because Barksdale's federal detention rendered her Kentucky bail moot,⁵ the trial court released the bond to her attorney, the assignee, by two orders entered February 3, 2003. In pertinent part, the first order provides as follows:

Upon agreement of the parties and the Court being sufficiently advised, IT IS HEREBY ORDERED that the refundable portion of the bail bond posted by Edna Barksdale on behalf of Jane Barksdale in Case Number 02-F-03514, previously assigned, shall be immediately released to the assignee, McCoy, West, Franklin & Beal.

02-F-03514 was the district-court file number. The second order, which follows immediately in the record, provides that,

[i]t appearing to the Court that the above styled case has been disposed of, therefore, IT IS HEREBY ORDERED by the Court that the Clerk of the Fayette District Court shall refund to Hon. Burl McCoy (bond assignee) the sum of \$10, 180.00.

The record indicates that the released bond was intended to cover Barksdale's attorney fee and that the amount in excess of that fee was returned to her. Barksdale does not claim otherwise.

⁵ KRS 440.450 to 440.510.

She does claim, however, that the clause "the above styled case has been disposed of" in the second quoted order means, or should be deemed to mean, that her indictment had been dismissed prior to her guilty plea. We disagree. Although the order may have been unartfully drafted, "above styled case" was clearly intended to refer to the district court proceeding, which was specified in the first order, and which had been "disposed of" in the sense that it had been transferred to the circuit court. The order does not mean that Barksdale's indictment had been "disposed of" prior to her plea. Her plea, therefore, implicated neither double jeopardy nor the ineffective assistance of counsel. Accordingly, we affirm the December 3, 2004, order of the Fayette Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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