

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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court Of Appeals

NO. 2005-CA-000193-MR

TERRY PIERCE

APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE ROBERT E. GILLUM, JUDGE
INDICTMENT NO. 01-CR-00131

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

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

KNOPF, JUDGE: On June 27, 2001, a Pulaski County grand jury returned an indictment charging Terry Pierce with first-offense manufacturing methamphetamine while in possession of a firearm.¹ On April 25, 2002, Pierce entered a plea of guilty to the charge

¹ Manufacturing methamphetamine, first offense is a class B felony, KRS 218A.1432, which is enhanced to a class A felony by possession of a firearm. KRS 218A.992.

of first-offense manufacturing methamphetamine. In exchange for this plea, the Commonwealth amended the indictment to delete the firearm enhancement. On May 1, 2002, the trial court sentenced Pierce to fifteen-years' imprisonment in accord with the Commonwealth's recommendation. The court further ordered this sentence to be served consecutively with another fifteen-year sentence imposed on Pierce by the Laurel Circuit Court.

On September 17, 2004, Pierce filed a *pro se* "Motion for concurrent sentencing pursuant to CR 60.02(f)," requesting that the trial court modify the judgment to allow him to serve his sentences concurrently. The trial court denied the motion on September 20, 2004. This appeal followed.

During the proceedings before the circuit court, Pierce did not state any factual basis to support the motion to modify his sentences. He acknowledged that KRS 532.110 gives the trial court discretion in deciding whether to run sentences concurrently or consecutively, and he merely requested that the trial court reconsider that decision. Since Pierce did not state specific grounds for granting post-conviction relief, the trial court did not err by summarily denying his CR 60.02(f) motion.²

² See Commonwealth v. Spaulding, 991 S.W.2d 651, 657 (Ky. 1999) and Parker v. Commonwealth, 465 S.W.2d 280, 281 (Ky. 1971).

Pierce also presents a number of other reasons to set aside his conviction and sentence, but he did not raise these grounds in his motion before the trial court. It is well-established that a party may not raise issues for the first time on appeal as the trial court is denied the opportunity to rule on the matters.³ Moreover, by entering an unconditional guilty plea to the charge of manufacturing methamphetamine, Pierce admitted the factual accuracy of the elements of the offense and is precluded from challenging the sufficiency of the evidence on that charge.⁴ Therefore, his argument relating to Kolila v. Commonwealth,⁵ is barred.

Accordingly, the September 20, 2004, order of the Pulaski Circuit Court denying Pierce's CR 60.02 motion is affirmed.

ALL CONCUR.

³ See McDonald v. Commonwealth, 554 S.W.2d 84 (Ky. 1977).

⁴ Johnson v. Commonwealth, 103 S.W.3d 687, 696 (Ky. 2003); Centers v. Commonwealth, 799 S.W.2d 51, 55 (Ky.App. 1990).

⁵ 114 S.W.3d 226 (Ky. 2003).

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