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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO 2005-CA-000802-MR

ANTHONY B. TAYLOR

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 89-CR-00185

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE: The single issue in this appeal is whether the trial court erred in denying appellant's CR 60.02 motion to modify the five-year sentence he received on July 5, 1989 for receiving stolen property. Appellant argues that under KRS 446.110 he is entitled to avail himself of the more lenient sentencing provisions of the amended version of KRS 514.110, which became effective July 15, 1994. Finding no error in the

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

decision of the trial court holding that appellant had been properly sentenced under the statute in place at the time the offence was committed, we affirm the denial of appellant's motion for CR 60.02 relief.

The interpretation accorded KRS 446.110 by the Supreme Court of Kentucky in Taylor v. Commonwealth² is dispositive of the argument appellant advances in this appeal:

At common law, when the legislature modified or repealed a statute, the courts no longer had the authority to enter any judgment relying upon the prior law. KRS 446.110 modifies this common law rule so that, unless the General Assembly specifically designates otherwise, "offenses committed against the statute before its repeal, may thereafter be prosecuted, *and the penalties incurred may be enforced.*" Unquestionably, therefore, the trial court had jurisdiction to sentence Lawson under the pre-amendment provisions of KRS Chapter 532.

This Court and its predecessor have consistently interpreted KRS 446.110 to require courts to sentence a defendant in accordance with the law which existed at the time of the commission of the offense unless the defendant specifically consents to the application of a new law which is "certainly" or "definitely" mitigating. As Lawson did not raise any issue in the trial court concerning the new provisions of KRS Chapter 532, he certainly did not consent to the application of the modified provisions.³

Of course, appellant in this case could not have consented to application of the modified provisions of KRS 511.110 because

² 53 S.W.3d 534, 550-51 (Ky. 2001).

³ Footnotes omitted.

the modification did not occur until approximately five years after his trial, four years after the affirmance of his conviction by the Supreme Court of Kentucky, and well after this Court affirmed the denial of his motion pursuant to RCr 11.42.

Under these circumstances, appellant was not entitled to invoke the extraordinary remedy afforded by CR 60.02, and the trial judge properly denied his motion for such relief.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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