

RENDERED: May 5, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000882-MR

TERRY D. MILLS

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NOS. 02-CR-00037 AND 02-CR-00053

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM,¹ HENRY, AND VANMETER, JUDGES.

BUCKINGHAM, JUDGE: Terry D. Mills appeals from an order of the McCracken Circuit Court denying his CR² 60.02 motion to vacate the court's judgment convicting him of criminal offenses and enhancing his sentence pursuant to the persistent felony offender (PFO) statute. This was Mills's second CR 60.02 motion. We affirm.

¹ This opinion was completed and concurred in prior to Judge David C. Buckingham's retirement effective May 1, 2006. Release of the opinion was delayed by administrative handling.

² Kentucky Rules of Civil Procedure.

First, Mills argues that the court erred by allowing the county jailer to be on the grand jury that issued an indictment, which included the PFO charge, against him. This issue has been previously addressed by this court in a manner adverse to Mills in an opinion rendered on January 16, 2004, in Case Nos. 2003-CA-000790-MR and 2003-CA-001025-MR. Therefore, it is the "law of the case," and Mills is not entitled to relief. See Commonwealth v. Schaefer, 639 S.W.2d 776, 777 (Ky. 1982).

Second, Mills alleges error by the court by claiming that he was improperly indicted as a persistent felony offender since persistent felony offender is not a criminal offense. His argument has no merit, as it is contrary to Price v. Commonwealth, 666 S.W.2d 749, 750 (Ky. 1984).

Third, Mills argues that his conviction should be vacated because the Commonwealth did not prove the prior judgment from the Alabama court that was used to support the PFO indictment. He claims that the PFO indictment was based only on a copy of the indictment from the Alabama court and not based upon any judgment of that court. Mills overlooks the fact that he pled guilty to being a persistent felony offender. Since "the effect of a plea of guilty is to waive all defenses other than that the indictment charges no offense," Mills's argument is to no avail since he pled guilty to the charge. See Quarles

v. Commonwealth, 456 S.W.2d 693, 694 (Ky. 1970). Also, Mills is not entitled to CR 60.02 relief on this issue since it is an issue that could have been raised on direct appeal. See Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983).

Finally, Mills argues that the persistent felony offender statute, KRS³ 532.080, is unconstitutional as a bill of attainder. A bill of attainder is a legislative prescription for the punishment of an act without a trial. Mills's argument is without merit because he had an opportunity for a trial on the charge to determine his guilt or innocence. Instead, Mills opted to plead guilty to being a persistent felony offender. Again, by doing so, he waived all defenses. See Gross, supra.

The order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Terry D. Mills, *Pro Se*
Burgin, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Rickie L. Pearson
Assistant Attorney General
Frankfort, Kentucky

³ Kentucky Revised Statutes.