

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001364-MR

LEONARD E. MARSH

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
INDICTMENT NO. 99-CR-001370

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE¹ AND VANMETER, JUDGES; BUCKINGHAM, SENIOR JUDGE.²

DYCHE, JUDGE: Leonard Marsh appeals the denial of a CR 60.02 motion. We affirm.

On August 3, 2000, Leonard Marsh was convicted of trafficking in cocaine, three counts of wanton endangerment, two counts of fourth degree assault, and of the status offense of

¹ This opinion was completed and concurred in prior to Judge R. W. Dyche, III's retirement effective June 17, 2006. Release of the opinion was delayed by administrative handling.

² Senior Judge David C. Buckingham, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

first degree persistent felony offender (PFO). He was sentenced the following October to a total of fifteen years' imprisonment.

Marsh's conviction was affirmed on direct appeal to this Court on November 9, 2001. Marsh unsuccessfully sought post-conviction relief by means of a CR 60.02 motion (filed March 25, 2001) and a combined CR 60.02/RCr 11.42 motion filed in April 2002. His latest motion for post-conviction relief, again brought pursuant to CR 60.02, was filed on April 25, 2005, and denied on May 5, 2005.

On appeal Marsh insists that his PFO conviction should be vacated. We have examined the record in its entirety and agree with the Commonwealth that the Jefferson Circuit Court correctly denied relief because the matter was not brought within a reasonable time, constituted a proscribed successive collateral attack, and was without merit. See Gross v. Commonwealth, 648 S.W.2d 853, 858 (Ky. 1983); and Manning v. Commonwealth, 23 S.W.3d 610 (Ky. 2000). Furthermore, Marsh has failed to demonstrate that the trial court abused its discretion. White v. Commonwealth, 32 S.W.3d 83, 86 (Ky.App. 2000).

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Leonard Marsh, *Pro Se*
Burgin, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Tami Allen Stetler
Assistant Attorney General
Frankfort, Kentucky