

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-002090-MR

JAMIE C. FERGUSON

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE JANET P. COLEMAN, JUDGE
ACTION NO. 02-CR-00480

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
AFFIRMING

** ** * ** * **

BEFORE: KELLER AND VANMETER, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Appellant, Jamie C. Ferguson, appeals the denial of his motion for relief pursuant to RCr 11.42 without an evidentiary hearing. We affirm.

Pursuant to an agreement with the Commonwealth, Ferguson pled guilty to manufacturing methamphetamine in Hardin Circuit Court. Thereafter he filed a CR 60.02 motion that was denied. While the appeal of the denial of the CR 60.02 motion

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

was pending, Ferguson filed an RCr 11.42 motion that was denied without an evidentiary hearing. This appeal followed.

The facts underlying Ferguson's guilty plea were fully recounted in this Court's previous opinion affirming the denial of his motion pursuant to CR 60.02 and we adopt them here:

On September 21, 2002, a security guard in a Kroger store observed Jamie C. Ferguson conceal on his person several boxes of generic pseudoephedrine. When the guard approached Ferguson, the latter threw the boxes at the guard and attempted to flee. A scuffle ensued, during which Ferguson injured the guard. Ferguson ultimately admitted to his attempt to steal those pills as well as over 300 from a nearby Walgreen's store; he stated that he used them to manufacture methamphetamine.

A Hardin Circuit Court grand jury indicted Ferguson the following month for the offenses of Manufacturing Methamphetamine, Second Degree Robbery, and the status offense of Persistent Felony Offender in the First Degree (PFO I). On January 17, 2003, Ferguson, in exchange for dismissal of the robbery charge, entered a plea of guilty to the drug offense and PFO I. He received a sentence of twenty years' incarceration, ordered to run consecutively with sentences received in Hopkins and Ohio Counties.

On February 17, 2004, Ferguson filed a motion pursuant to CR 60.02 to vacate his convictions based on the Kentucky Supreme Court's opinion in *Kotila v. Commonwealth*, 114 S.W.3d 226 (Ky.2003). There it was decided that KRS 218A.1432(1)(b) as it was written then required possession of all the chemicals or all the items of equipment necessary to effect the manufacture of methamphetamine. Ferguson insisted then, as he does here, that possession of only one chemical (albeit a vast quantity of it) rendered his guilty plea invalid as “based on ... misinformation.”

Ferguson v. Commonwealth, 2004-CA-002211-MR, (December 29, 2005)(footnotes omitted). This Court dismissed the notion that Ferguson's guilty plea was somehow invalid because of “misinformation” concerning the elements required to constitute the offense. The denial of Ferguson's CR 60.02 motion was affirmed on the basis that he admitted to manufacturing methamphetamine. Therefore, “[i]t was not incumbent upon the Commonwealth to prove any of the statutory elements.”

In the present appeal, Ferguson raises the same argument as in his CR 60.02 motion; that his guilty plea was invalid because of a misunderstanding of the elements necessary to convict for manufacturing methamphetamine. This argument has already been litigated and was rejected by this Court in Ferguson's previous appeal. Therefore, the decision of this Court in *Ferguson*, supra, is the law of the case and we are bound by its decision. The law of the case doctrine precludes the re-litigation of any issue raised and decided in a prior appeal. *Williamson v. Commonwealth*, 767 S.W.2d 323, 325 (Ky. 1989).

Additionally, the Commonwealth's motion for this Court to take judicial notice of our own records and the on-line records of the Supreme Court of Kentucky is hereby DENIED as unnecessary.

Therefore, the order of the Hardin Circuit Court is affirmed.

ALL CONCUR.

ENTERED: SEPTEMBER 21, 2007

/s/ Daniel Guidugli
SENIOR JUDGE, COURT OF APPEALS

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