

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-000763-MR

ROBERT CHAMBERS

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE EDWIN M. WHITE, JUDGE
ACTION NO. 02-CR-00687

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: DIXON AND KELLER, JUDGES; GRAVES, SENIOR JUDGE.¹

GRAVES, SENIOR JUDGE: Robert Chambers appeals from an order of the Christian Circuit Court denying his motion for post-conviction relief pursuant to CR² 60.02 challenging the Department of Corrections' classification of him as a violent offender. We affirm.

¹ Senior Judge John W. Graves, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

² Kentucky Rules of Civil Procedure.

On December 20, 2002, Chambers was indicted for two counts of first-degree robbery, KRS³ 515.020, and one count of possession of a handgun by a minor, KRS 527.100. The charges resulted from Chambers' involvement in the robbery of a bait shop on October 21, 2002, in the course of which a firearm was used.

On August 27, 2003, Chambers entered into a plea agreement with the Commonwealth. Pursuant to the agreement Chambers pled guilty to two counts of first-degree robbery, the possession charge was merged into the robbery charges, and the Commonwealth agreed to recommend a sentence of ten years on each count, to run concurrently. On October 20, 2003, the trial court entered final judgment and sentence in accordance with the agreement.

On March 17, 2006, Chambers filed a motion captioned “Motion to Amend Judgment Pursuant to CR 60.02(f).” The motion argued that since the final judgment entered in his first-degree robbery convictions did not identify Chambers as a violent offender he is, pursuant to the terms of the judgment, not a violent offender, and the Department of Corrections is now impermissibly classifying him as a violent offender, thereby improperly extending his parole eligibility date from 20% of his sentence to 85% of his sentence. The motion further alleged, in summary, that since the victim did not incur serious physical injuries, he is entitled to the entry of an amended judgment specifically stating that the appellant is not a violent offender.

³ Kentucky Revised Statutes.

The version of KRS 439.3401, the violent offender statute in effect at the time Chambers committed his offenses - October 2002 - provided, in relevant part, as follows:

(1) As used in this section, “violent offender” means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim or serious physical injury to a victim, or rape in the first degree or sodomy in the first degree of the victim, burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510, burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060, burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040, or robbery in the first degree. The court shall designate in its judgment if the victim suffered death or serious physical injury.

(8) The provisions of subsection (1) of this section extending the definition of “violent offender” to persons convicted of or pleading guilty to robbery in the first degree shall apply only to persons whose crime was committed after July 15, 2002. (Emphasis added).

Under subsection 1, the definition of a violent offender plainly includes a person who has been convicted of first-degree robbery. Pursuant to subsection 8, the robbery provision is effective for first-degree robberies committed after July 15, 2002. As Chambers stands convicted of a first-degree robbery committed after July 15, 2002, by statutory definition, whether stated as such in the judgment or not, Chambers falls within the classification of a violent offender. Accordingly, the Department of Corrections has properly classified him as such.

Chambers argues, however, that the sentence stating that “[t]he court shall designate in its judgment if the victim suffered death or serious physical injury” is of decisive significance since the trial court did not state as such in the original judgment and because the victim did not, in fact, suffer a serious physical injury. Chambers contends that these factors entitle him to an amended judgment specifically stating that he is not a violent offender.

In *Fambrough v. Department of Corrections*, 184 S.W.3d 561 (Ky.App. 2006) this Court considered this argument within the context of first-degree sodomy. The decision addressed the issue as follows:

As can be seen, the violent offender statute does not apply to all Class B felonies, and the violent offender statute is not simply limited to those Class B felonies in which the victim died or suffered serious physical injuries. The statute clearly states that a violent offender is anyone who has pled guilty to or was convicted of sodomy in the first degree. KRS 439.3401(1). The statute applies to all convictions for sodomy in the first degree; just as it applies to all convictions for any capital offense, for any Class A felony and for rape in the first degree regardless whether the victim suffered death or serious physical injury. See *Jackson v. Taylor*, 153 S.W.3d 842 (Ky.App. 2004). In the present case, the judgment reflects that Fambrough pled guilty to sodomy in the first degree. This was sufficient to put DOC on notice that the violent offender statute applied to him. DOC correctly classified Fambrough as a violent offender pursuant to KRS 439.3401(1) despite the absence of the “death or serious physical injury” language from the trial court's judgment.

Id. at 563.

The same rationale applied in *Fambrough* in the case of a first-degree sodomy conviction applies equally to the first-degree robbery conviction at bar. As such,

we are of the opinion that Chambers is properly designated as a violent offender under KRS 439.3401 and the circuit court did not err by denying his CR 60.02 motion.

For the foregoing reasons, the order of the Christian Circuit Court is affirmed.

ALL CONCUR.

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