

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-002127-MR

RODNEY WALKER

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
INDICTMENT NO. 98-CR-00259

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

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

GRAVES, SENIOR JUDGE: Rodney Walker appeals from an order of the Daviess Circuit Court denying his petition for declaration of rights. Walker argues that he is entitled to a permanent injunction to prevent him having to register as a sex offender. Finding no error, 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 KRS 21.580.

On August 3, 1998, Walker was indicted on one count each of Rape in the First Degree and Sodomy in the First Degree. On April 3, 2000, Walker pleaded guilty and pursuant to the plea agreement was sentenced to a fifteen-year sentence on each count, to be served concurrently. The agreement also included a three-year term of conditional discharge.

On April 18, 2000, Walker filed an appeal. Walker's appeal, in pertinent part, alleged that KRS² 532.043 (requiring conditional discharge for certain felonies) was an unconstitutional ex post facto law retroactively applied to him. On appeal, this Court reversed that portion of the sentence regarding conditional discharge.³ On June 30, 2000, prior to our decision on Walker's initial appeal, Walker again appeared before the trial court and, pursuant to KRS 17.520, was notified of his requirement to register as a sex offender. On that date, the trial court amended its final judgment to include the three-year conditional discharge and sex offender registration requirement upon Walker. On March 6, 2002, following our decision on Walker's initial appeal, the trial court's judgment was again amended to delete any provision requiring the three-year conditional discharge.

On August 29, 2006, Walker filed a Petition for Declaration of Rights, seeking to have the trial court's June 30, 2000, amended judgment “declared a nullity” because it was unlawfully amended in violation of CR⁴ 59.05. Walker also sought an

² Kentucky Revised Statutes.

³ See *Walker v. Commonwealth*, 2000-CA-00973-MR, rendered unpublished on May 25, 2001.

⁴ Kentucky Rules of Civil Procedure.

injunction requiring the Department of Corrections to provide him with “good time” credits allegedly earned upon his completion of a sex offender treatment program. On September 11, 2006, the trial court denied Walker's petition. A motion for reconsideration was also denied. This appeal followed.

Walker argues that the trial court erred when it denied his Petition for Declaration of Rights. Walker contends that although he did not timely appeal from the trial court's June 30, 2000, amended judgment, he is nevertheless entitled to relief because the amended sentence amounted to palpable error pursuant to RCr⁵ 10.26. We disagree.

RCr 10.26 provides, in pertinent part, that:

[a] palpable error which affects the substantial rights of a party may be considered by . . . an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

Walker contends that the trial court's amended judgment was entered in excess of ten days following the original judgment and that, pursuant to RCr 59.05, it lost jurisdiction to amend the sentence and is thus void. In support of his argument, Walker cites *Silverburg v. Commonwealth*, 587 S.W.2d 241 (Ky. 1979), wherein the Kentucky Supreme Court held that an order modifying the defendant's perjury sentence entered 38 days subsequent to the original judgment was void because the trial court lost jurisdiction to amend the sentence. Here, it is undisputed that the trial court's amended judgment was entered 88 days after the original order. It is equally undisputed that Walker failed to

⁵ Kentucky Rules of Criminal Procedure.

preserve the issue for appeal. Nevertheless, Walker insists that sentencing is jurisdictional and sentencing error cannot be waived by his failure to object. *See Wellman v. Commonwealth*, 694 S.W.2d 696 (Ky. 1985).

Even assuming Walker's position is correct, the trial court's error in amending the judgment was harmless in view of our May 25, 2001, decision in *Walker v. Commonwealth*. In *Walker*, we reversed that portion of the trial court's amended judgment requiring that he be subjected to the additional penalty of a conditional discharge. Therefore, following our reversal, the trial court's amended judgment mirrored the original judgment. Inasmuch as the amended judgment also includes language concerning Walker's statutorily required duty to register as a sex offender, such is not punitive in nature. Moreover, even if the trial court failed to address sex offender registration at all, as the original judgment so failed, Walker would still be required to register pursuant to KRS 17.520.⁶ Accordingly, because Walker has failed to show how “manifest injustice” resulted from the trial court's amended judgment, we decline to grant relief.

⁶ KRS 17.520 provides, in relevant part, that:

- (1) A registrant, upon his or her release by the court, the Parole Board, the cabinet, or any detention facility, **shall be required to register** for a period of time under this section.
- (2) (a) Lifetime registration is required for:
 5. Any person who has been convicted of:
 - a. Rape in the first degree under KRS 510.040;
 - or
 - b. Sodomy in the first degree under KRS 510.070

(Emphasis added).

Additionally, we are unable to consider Walker's argument that the Department of Corrections has erroneously withheld “good time” credit after he allegedly completed a sexual offender treatment program. After reviewing the record, we find that Walker failed to exhaust the administrative remedies in place for this type of claim. *See* KRS 454.415. Thus, this issue is not properly before us. *See Anderson v. Parker*, 964 S.W.2d 809 (Ky.App. 1997).

The order of the Daviess Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rodney Walker, pro se
Fredonia, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

Matthew R. Krygiel
Assistant Attorney General
Frankfort, Kentucky