

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000493-MR

KENNETH RITCH

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE HENRY M. GRIFFIN III, JUDGE
ACTION NO. 06-CR-00121

COMMONWEALTH OF KENTUCKY

APPELLEE

AND

NO. 2007-CA-000631-MR

KENNETH RITCH

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 06-CR-00227

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: STUMBO AND WINE, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Appellant, Kenneth Ritch, appeals the denial of two separate motions pursuant to CR 60.02. Because the issues in both appeals are identical, we will dispose of this matter with one opinion and affirm.

On April 14, 2006, Ritch pled guilty to possession of a firearm by a convicted felon, operating a motor vehicle while his license was suspended for DUI, and third degree criminal trespass. The trial court ordered “[a]ll sentences to run concurrently for a total combined 4 years in the penitentiary, but consecutively with Daviess Circuit Court No. 06-CR-227 for a total combined 6 years in the penitentiary.” In Daviess Circuit Court Case No. 06-CR-227, Ritch plead guilty to DUI, fourth or subsequent offense, and to operating a motor vehicle while his license was suspended for DUI. The court sentenced Ritch to two years' imprisonment on these charges to run consecutively to his four year sentence. Ritch filed CR 60.02 motions in both trial courts that were both denied. The issue is whether KRS 532.110(2) and KRS 533.060(2) require that the sentences in each case run concurrently with each other.

KRS 532.110(2) states:

If the court does not specify the manner in which a sentence imposed is to run, the sentence shall run concurrently with any other sentence which the defendant must serve unless the sentence is required by subsection (3) of this section or KRS 533.060 to run consecutively.

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.

Ritch claims that the judgments were silent as to whether the sentences were to run consecutively or concurrently. Both judgments plainly state that the sentences were to run consecutively. Ritch is not entitled to relief.

Ritch next argues that the sentences should run concurrently pursuant to KRS 533.060(2) because he was not on probation or parole when he committed the offenses and that the indictments contained duplicate charges. KRS 533.060(2) states:

When a person is convicted of a felony and is committed to a correctional facility and released on parole or has been released by the court on probation, shock probation, or conditional discharge, and is convicted or enters a plea of guilty to a felony committed while on parole, probation, shock probation, or conditional discharge, the person shall not be eligible for probation, shock probation, or conditional discharge and the period of confinement for that felony shall not run concurrently with any other sentence.

This provision has no application to the circumstances of this case.

Finally, Ritch argues that the trial courts both erred by failing to consider sentencing alternatives as required by KRS 533.010. This argument is without merit. The judgments in these cases plainly indicate the trial court considered sentencing alternatives, but deemed imprisonment necessary for a litany of reasons.

Accordingly, we affirm the order of the Daviess Circuit Court in Appeal No. 2007-CA-000493-MR and affirm the order in Appeal No. 2007-CA-000631-MR.

ALL CONCUR.

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