

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000645-MR

ROY T. STACEY

APPELLANT

v. APPEAL FROM NELSON CIRCUIT COURT
HONORABLE TOM McDONALD, SPECIAL JUDGE
ACTION NO. 97-CR-00082

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING

** ** * * * * *

BEFORE: THOMPSON AND WINE, JUDGES; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: The single issue in this appeal is whether the trial judge erred in amending a criminal conviction more than six years after the judgment became final. Because there is no doubt that the trial judge acted without jurisdiction, the order amending the judgment must be vacated as void.

In August, 1999, appellant Roy T. Stacey entered a guilty plea to five counts of third-degree rape, five counts of third-degree sodomy, and to being a first-

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

degree persistent felony offender for which he was sentenced to 15 years' imprisonment. Having entered a guilty plea, Stacey waived the right to appeal his conviction which became final ten (10) days after entry of the final judgment on October 21, 1999. Over six years after the judgment became final, an Assistant Commonwealth's Attorney moved to "amend the Final Judgment of Conviction to reflect that the Defendant shall have no contact with the victim's [sic] in regard to the above-styled case." The apparent basis for the motion was that Stacey had sent the victim a Christmas card which included an arguably conciliatory handwritten note which stated in part: "...I am sorry for any pain I may caused [sic] you or your family...." The trial judge conducted a hearing and, over the objection of Stacey's court-appointed counsel, granted the motion, amending the judgment to include a no-contact provision stating that the appellant "immediately cease and desist all communications with the victim...and the victim's mother...until further notice." It is clear the trial court had no jurisdiction to impose the additional requirement.

No legal proposition is more well-settled than that litigation must end in a reliable judgment. To that end, the jurisdiction of trial courts to alter or amend judgments is limited by the plain and unambiguous language of CR 59.05. In *McMurray v. Commonwealth*, 682 S.W.2d 794, 795 (Ky.App. 1985), we reiterated that the jurisdictional constraint has been consistently applied in a long line of cases:

In setting aside the earlier judgment, the trial court erred in ignoring the general principle, recognized by the Commonwealth appellee in its brief, that a trial court loses control of its judgment 10 days after its entry. *Silverburg v.*

Commonwealth, Ky., 587 S.W.2d 241 (1979). When our criminal rules do not supersede our civil rules or are not inconsistent with them, our civil rules apply. Since our criminal rules do not provide for trial court control of criminal judgments, our civil rule 10 day control provision applies. *See* RCr 1.10, RCr 13.04 and CR 59.05. **The trial court could not amend its original judgment since 10 days had obviously passed when it did so.** [Emphasis added.]

So fundamental is this principle that the Attorney General quite properly concedes the error, recognizing in the Commonwealth's brief that judgments may be amended outside this time-frame only for the correction of clerical errors under RCr 10.10. *Cardwell v. Commonwealth*, 12 S.W.3d 672 (Ky. 2000). The Commonwealth also acknowledges that the amendment in this case can in no way be considered correction of a clerical error. It is the imposition of an entirely new and distinct condition to a sentence which had been final for more than six years.

We are entirely empathetic to the valid concerns of the victim in this case to have no contact with Stacey; however, there are proper legal remedies she may pursue to deal with her concerns.

Accordingly, the order amending the 1999 judgment is vacated as being void for lack of jurisdiction.

ALL CONCUR.

BRIEF FOR APPELLANT:

Matthew T. Ross
Assistant Public Advocate
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Michael L. Harned
Assistant Attorney General
Frankfort, Kentucky