

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001675-MR

FRANKIE CROWLEY

APPELLANT

v. APPEAL FROM LINCOLN CIRCUIT COURT
HONORABLE DAVID A. TAPP, JUDGE
ACTION NO. 06-CR-00109

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: Frankie Crowley appeals the trial court's denial of his post-conviction motion seeking to set aside his conditional discharge. On appeal, Crowley raises multiple issues, including a constitutional challenge. We find that Crowley's motion was untimely and affirm.

In November of 2007, Crowley pleaded guilty to first-degree rape and first-degree sodomy in exchange for a sentence recommendation of twenty years' imprisonment. In February of 2008, the trial court sentenced Crowley to twenty years' imprisonment in accordance with the plea agreement. In addition, the trial court informed Crowley, both orally and in writing, that he would be subject to a five-year period of conditional discharge¹ after the completion of his sentence. The conditional discharge is mandated pursuant to Kentucky Revised Statute (KRS) 532.043 because Crowley's conviction was based on sexual offenses.

On July 16, 2014, Crowley filed the motion currently before this Court. The motion was styled: "Motion to Amend Sentence on the Conditional Discharge." The motion does not indicate whether it was being brought under Kentucky Rule of Civil Procedure (CR) 60.02 or Kentucky Rule of Criminal Procedure (RCr) 11.42. Crowley sought to be relieved of the conditional discharge portion of his sentence, alleging it was unconstitutional. The trial court summarily denied the motion and this appeal followed.

It is clear that the trial court correctly denied Crowley's motion. As stated earlier, Crowley did not indicate if he was bringing the motion pursuant to CR 60.02 or RCr 11.42. We believe that Crowley's motion is untimely under both rules. CR 60.02 states that a motion under that rule should be brought "within a reasonable time." RCr 11.42 states that a motion under that rule should be brought

¹ Conditional discharge is now referred to as postincarceration supervision.

“within three years.” In the case at hand, Crowley waited six years before he brought the motion currently on appeal. Six years does not fit within either time frame.

In addition, any challenge to the constitutionality of a statute requires that the Attorney General be informed pursuant to KRS 418.075. There is no indication that Crowley made such notification when this case was before the trial court; therefore, we are unable to review the merits of the constitutional question raised. *Skaggs v. Commonwealth*, 488 S.W.3d 10, 16 (Ky. App. 2016).

Based on the foregoing, we affirm the judgment of the trial court.

CLAYTON, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Frankie Crowley, *pro se*
Burgin, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

John Paul Varo
Assistant Attorney General
Frankfort, Kentucky