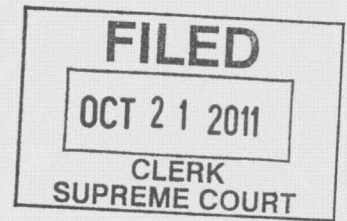


COMMONWEALTH OF KENTUCKY
SUPREME COURT
NO. 10-SC-685



COMMONWEALTH OF KENTUCKY

PETITIONER

CERTIFICATION OF LAW FROM FAYETTE CIRCUIT COURT,
HONORABLE JAMES ISHMAEL, JR., JUDGE PRESIDING
ACTION NO. 10-CR-0064

RICHARD DERRINGER

RESPONDENT

REPLY BRIEF FOR PETITIONER
COMMONWEALTH OF KENTUCKY

JACK CONWAY
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to be "J. Conway", written over a horizontal line.

Jeanne Anderson
Assistant Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of this Reply Brief for Petitioner, Commonwealth of Kentucky, were mailed this 21st day of October, 2011, to the Hon. James Ishmael, Judge, Fayette Circuit Court, 551 Robert Stephens Courthouse, 120 North Limestone Street, Lexington, Kentucky 40507; to Hon. Gregg Clendenin, P.O. Box 1138, Nicholasville, Kentucky, 40340, Counsel for Respondent; and to Cynthia Rieker, Assistant Commonwealth Attorney, 116 North Upper Street, Lexington, Kentucky, 40507. I further certify that the record on review has been returned to the Court.

JACK CONWAY
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to be "J. Conway", written over a horizontal line.

Jeanne Anderson

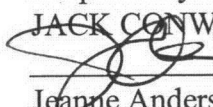
The purpose of this reply brief is to refute Respondent's contention that the prosecution below violated KRS 533.258 by introducing his diversion records at the grand jury. Respondent simply misreads the statute. The only time diversion records are excluded from use in civil or criminal cases is when the person has successfully *completed* diversion. It is an age-old rule of statutory construction that the title of a statute evinces legislative intent. This rule derives from the Kentucky Constitution, which requires the title relate to the body of the legislation:

in the absence of such a constitutional provision, it may well be said that the title is no part of the act, but here the constitution makes the title a part of the act, even to such an extent as to control the application of the act itself. Instead of its being the duty of the courts to disregard the title, they are compelled by the constitution to consider both the body and the title in order to arrive at the legislative intention.

Joyce v. Woods, 78 Ky. 386 (Ky.App.1880).

The title of KRS 533.258 reads "Effects of successful completion of diversion agreement." Obviously, when the body of the statute is read in conjunction with the title, it is clear that the intent behind the legislation is to provide relief for those persons who have successfully completed their diversionary period. Only then are any charges considered "dismissed-diverted." Such is simply not true in Respondent's case: his felony charge was still active in Jessamine County when his Fayette County case went before the grand jury.

Respectfully submitted,
JACK CONWAY



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