

**Commonwealth of Kentucky**  
**Supreme Court**  
No. 2009-SC-671

**FILED**  
APR 12 2010  
SUPREME COURT CLERK

**COMMONWEALTH OF KENTUCKY**

**APPELLANT**

v.

Appeal from McCracken Circuit Court  
Hon. R. Jeffrey Hines, Judge  
Indictment No. 04-CR-00109-02

**RAYCINE M. LOVE**

**APPELLEE**

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**Appellant's Reply Brief**

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**Submitted by,**

**JACK CONWAY**

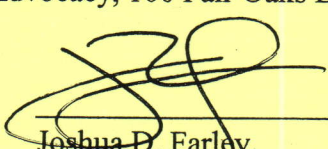
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**CERTIFICATE OF SERVICE**

I certify that the record on appeal was not checked out from the Clerk of this Court and that a copy of the Appellant's Reply Brief has been mailed this 12th day of April 2010, to Honorable R. Jeffrey Hines, Judge, McCracken Circuit Court, McCracken County Courthouse, 301 S. 6<sup>th</sup> Street, Paducah, Kentucky 42003; via electronic mail to: Hon. Raymond D. McGee, Assistant Commonwealth's Attorney, McCracken County Courthouse, 301 S. 6<sup>th</sup> Street, Paducah, Kentucky 42003; and via state delivered messenger mail to: Hon. Karen Shuff Maurer, Assistant Public Advocate, Department for Public Advocacy, 100 Fair Oaks Lane, Suite 302, Frankfort, Kentucky 40601, Counsel for Appellee.

  
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Joshua D. Farley

Assistant Attorney General

## **Purpose of Reply Brief**

The purpose of this Reply Brief is to address Appellee's arguments that Warren v. Commonwealth, 981 S.W.2d 134 (Ky.App. 1998) is distinguishable and that KRS 533.060 is inapplicable.

### **I.**

#### **Well-established law allows the Commonwealth to wait to revoke probation until after conviction.**

Appellee attempts to distinguish Warren v. Commonwealth, 981 S.W.2d 134 (Ky.App. 1998), from the case at bar, by stating that in Warren it was determined that revocation could take place after conviction, due to the fact that the Commonwealth was not notified of the defendant's arrest until the conviction became final. This reading is outside the well-established law in Kentucky and is without merit. It is well-established that the time period for revocation does not begin to run until after final sentencing has occurred. Myers v. Commonwealth, 836 S.W.2d 431 (Ky. App. 1992)(overruled on other grounds by Sutherland v. Commonwealth, 910 S.W.2d 235 (Ky. 1995)). As the court in Myers pointed out, there are compelling reasons to postpone a revocation hearing until final disposition of the other charges such as safeguarding the defendant from self-incrimination and judicial economy by circumventing duplicative hearings. Id., at 433 - 434. For Appellee to argue otherwise would appear contrary to protections typically afforded defendants. It would be a dangerous rule that would impose mandatory revocation prior to conviction when new charges are received. This is not to say that it is necessary for the Commonwealth to obtain a conviction in order to accomplish revocation of probation. Tiryung v. Commonwealth, 717 S.W.2d 503, 504 (Ky.App. 1986).

It should be reiterated that, in the case at bar, the Commonwealth did indeed act in a speedy manner in attempting to have the Appellee released to its custody, by properly filing a detainer with the federal prison within 90 days after he was finally sentenced on his federal conviction. This detainer put the Appellee on notice that the Commonwealth was seeking to revoke his probation. As such, under Sutherland v. Commonwealth, 910 S.W.2d 235 (Ky. 1995), the 90-day window, in which to revoke the Appellee's probation and run his sentences consecutively had not run.

## II.

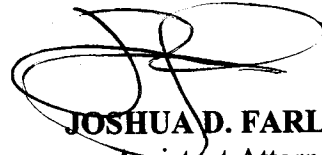
**The later enacted statute, KRS 533.060, controls under these circumstances.**

Appellee argues that the language of KRS 533.060 does not specifically specify that it is applicable to federal offenses; however again this argument is devoid of merit. It is true that KRS 533.060 does not specifically discuss federal offenses, it also does not specifically discuss state offenses. Under Appellee's argument KRS 533.060 would be inapplicable to any offense. This is an illogical reading of the statute. Given the plain language and the lack of modifiers for the offenses, the statute was clearly intended to be applicable to **all** offenses both federal and state.

Appellee again emphasizes the importance of KRS 533.040; however as this Court has previously recognized in Brewer v. Commonwealth, 922 S.W.2d 380, 382 (Ky. 1996), "Since KRS 533.060 was enacted in 1976, and KRS 533.040 was enacted in 1974, the former controls." This Court's decision in Gavel v. Commonwealth, 674 S.W.2d 953 (Ky. 1984) should be re-examined under Brewer, for its illogical holding.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'J. Farley', with a large, stylized flourish at the end.

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