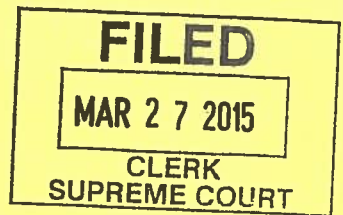


COMMONWEALTH OF KENTUCKY
SUPREME COURT
CASE NUMBER: 2013-SC-000559



(On Appeal from Ky. Court of Appeals, Case No. 2011-CA-000465)

LAWRENCE E. PATE

APPELLANT

VS.

Appeal from Bracken Circuit Court, Division
Hon. Lewis Nichols, Special Judge
Case No: 03-CR-00008

COMMONWEALTH OF KENTUCKY

APPELLEE

REPLY BRIEF FOR APPELLANT

Respectfully submitted by,

A handwritten signature in cursive script that reads "Margaret A. Ivie".

MARGARET A. IVIE
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CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2015, the foregoing "Reply Brief for Appellant" was served by first class mail upon Hon. Lewis D. Nicholls, Special Judge, P.O. Box 205, Brooksville, KY 41004-0205; Hon. Ken W. Riggs, Assistant Attorney General, Office of Criminal Appeals, 1024 Capital Center Drive, Suite 200, Frankfort, KY 40601; Hon. J. Kelly Clarke, Commonwealth's Attorney, 100 West Third Street, Maysville, KY 41056; and Mr. Lawrence Pate, #164306, Little Sandy Correctional Complex, 505 Prison Connector, Sandy Hook, KY 41171. The record on appeal has not been checked out from the Supreme Court of Kentucky.

A handwritten signature in cursive script that reads "Margaret A. Ivie".

Margaret A. Ivie
Assistant Public Advocate

PURPOSE OF REPLY

The purpose of Appellant's Reply Brief is to respond to the Commonwealth's contention that Appellant has failed to cite judicial action as the basis for his due process claim. (Brief for Appellee, hereinafter "BA", p. 8-10).

ARGUMENT


The Commonwealth represents to this Court in its Brief that the error that Appellant is claiming is not a judicial error and therefore cannot be remedied through his CR 60.02 Motion. (BA, p. 8). The Commonwealth describes the error as one by the Department of Corrections, but fails to address the fact that Appellant contends that he was denied due process to which he was entitled through the Due Process Clause of the Fourteenth Amendment by the *judicial action* of the trial court in convicting him and sentencing him without proper notice of the charges and sentence he faced. The Commonwealth states that Pate is not complaining about "the process of his trial," (BA, p. 9), but, in fact, he is. Pate repeatedly states in his Brief for Appellant, p. 8-12, that he was entitled to know, prior to trial, about the charges and sentence that he faced if convicted, and he did not.

The Commonwealth is simply trying to suggest that this Court ignore this pleading in favor of Pate's declaration of rights action by claiming there is no judicial action of which to complain, and that the action at issue was done by the Department of Corrections. However, the Commonwealth essentially concedes the merits of Pate's claim when, later in its Brief, it states that the declaration of rights action presently before this Court is the "best" way to resolve this situation, not the only way. (BA, p. 10).

CONCLUSION

Pate has complained of judicial action which violated his due process rights under the Fourteenth Amendment of the United States Constitution. The Commonwealth's argument ignores the substance of Pate's argument and simply encourages the Court look to the Department of Corrections for relief instead of the Commonwealth. For the reasons stated in Pate's Amended Brief for Appellant, and those contained in this Reply Brief, Pate respectfully requests this Honorable Court grant him relief pursuant to CR 60.02 and vacate his conviction based upon the due process violation that resulted from his conviction and sentence in Bracken County Indictment 03-CR-00008.

Respectfully submitted,


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