

However, the neighbors are neither involved in this suit nor bound by its result. As to the line between Ganong and Berry the evidence supports the judgment.

The judgment is affirmed.



William L. AUSTIN, Appellant,

v.

COMMONWEALTH of Kentucky, Appellee.

Court of Appeals of Kentucky.

Jan. 22, 1965.

Rehearing Denied March 19, 1965.

Defendant was convicted in the Circuit Court, McCracken County, C. Warren Eaton, J., of offering obscene literature for sale, and he moved for appeal. The Court of Appeals held that record revealed no error.

Motion for appeal overruled.

Moremen, C. J., dissented.

Criminal Law ⇨1072

Record on conviction for offering obscene literature for sale revealed no error, and motion for appeal was overruled. KRS 436.100.

Charles A. Williams, Paducah, for appellant.

Robert F. Matthews, Atty. Gen., John B. Browning, Asst. Atty. Gen., Frankfort, Albert Jones, Commonwealth Atty., Paducah, for appellee.

PER CURIAM.

Motion for an appeal from a judgment of conviction of offering obscene literature for

sale contrary to KRS 436.100 and imposing a fine of \$250.00 and costs.

We find no error in the trial, and the motion for an appeal is overruled.

MOREMEN, C. J., dissenting.



Willard Earl COLLIER, Petitioner,

v.

Hollie CONLEY, Judge, Floyd Circuit Court, Prestonsburg, Ky., Respondent.

Court of Appeals of Kentucky.

Jan. 22, 1965.

Original proceeding on petition by a prisoner for writ of mandamus to compel judge of circuit court to rule on petitioner's motion pursuant to rule, RCr 11.42, to vacate judgment under which petitioner was confined. The Court of Appeals, Davis, C., held that since no answer was made to petition for mandamus, allegations of the petition must be treated as confessed and the requested relief granted.

Petition for mandamus sustained with directions.

I. Mandamus ⇨168(2)

Where prisoner seeking writ of mandamus to compel judge of circuit court to rule on motion to vacate judgment was acting pro se and in forma pauperis without counsel, Court of Appeals would presume that judgment which prisoner sought to vacate was judgment under which he was presently confined, though petition for writ of mandamus did not specifically so state. RCr 11.42; KRS 21.050; Const. § 110.