

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-000369-MR

JEFFERY CARDINE

APPELLANT

ON REMAND FROM SUPREME COURT OF KENTUCKY
NO. 2002-SC-0099-DG

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 80-CR-000360

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. This is an appeal from an order denying appellant's motion pursuant to both RCr 11.42 and CR 60.02, alleging that a narrative statement filed in his case was fraudulently obtained. Originally, this panel ruled that it did not have jurisdiction of the appeal herein and dismissed the appeal. The Supreme Court, in a published decision, remanded the matter for an opinion on the merits. In reviewing the

record and the parties' briefs, it became obvious that this issue was previously decided against Cardine pursuant to a previous RCr 11.42 motion, the denial of which is final.

Therefore, we affirm.

Appellant, Jeffery Cardine, was tried by jury in the Jefferson Circuit Court on July 29-30, 1980, and convicted of three counts of first-degree robbery, for which he was sentenced to 20 years' imprisonment on each count. Two of the counts were to be served consecutively, while the third was to be served concurrently, for a total of 40 years. Our Supreme Court affirmed the conviction in a published opinion, Cardine v. Commonwealth, Ky., 623 S.W.2d 895 (1981). On September 18, 2000, Cardine filed his third RCr 11.42 motion. When this motion was denied by the Jefferson Circuit Court, he appealed said denial to this Court.

Jeffery Cardine's appeal before us relates back to his first (direct) appeal to the Supreme Court. The Supreme Court noted that "[t]he court reporter lost her stenographic notes and was unable to provide a transcript of the trial." Cardine, 623 S.W.2d at 896. The Supreme Court ordered Cardine to file a narrative statement pursuant to CR 75.13, which he did. The Court noted that "[t]he statement was agreed upon by both parties, and was prepared through the joint cooperation and recollections of the trial judge, defense counsel, appellant,

and the prosecutor." Id. The Court reviewed the statement, and decided it was adequate to decide the appeal, and affirmed the conviction. Id. at 897.

In this appeal, Cardine contends he told counsel that he "did not want [sic] a narrative statement." He contends the statement by the Supreme Court that he (Cardine) helped prepare and agreed upon the facts in the agreed statement is false. Cardine contends he never saw it, agreed to it nor signed it. In denying Cardine's motion, the trial court noted that in his first RCr 11.42 motion (filed August of 1984), Cardine alleged ineffective assistance of counsel in that the narrative statement was fraudulent and done without his consent. This motion was denied on November 2, 1984. There was no appeal. A second RCr 11.42 motion was filed, and denied on March 24, 1987. The current RCr 11.42/CR 60.02, which is the subject of this appeal, was filed September 13, 2000, and denied on November 22, 2000. Again, as in the first RCr 11.42 motion, Cardine contended this narrative statement prepared for his direct appeal was fraudulent and done without his consent.

Cardine's first RCr 11.42 motion alleged the same grounds as the present motion. It was denied and not appealed. The denial therefore became final and this Court cannot reevaluate that decision. Thomas v. Commonwealth, Ky., 931 S.W.2d 446, 450 (1996). Cardine cannot bring successive claims

on the same grounds. See Clements v. Commonwealth, Ky., 441 S.W.2d 158 (1969).

Cardine also labeled his motion as a CR 60.02 motion, for newly discovered evidence and fraud. However, in Gross v. Commonwealth, Ky., 648 S.W.2d 853 (1983), our Supreme Court made it clear that a CR 60.02 motion was not intended merely as an additional opportunity to relitigate issues that could have been (or were) litigated in the direct appeal or the RCr 11.42 proceedings. See also, Clements, 441 S.W.2d 158.

Cardine's motion, captioned as a motion under both RCr 11.42 and CR 60.02, raised the same allegations as were raised in the first RCr 11.42 motion, the denial of which is final. The trial court did not err in denying Cardine's current motion.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffery Cardine, pro se
Burgin, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III
Attorney General

Connie V. Malone
Assistant Attorney General
Frankfort, Kentucky