

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000271-MR

MARK T. RICHARDSON

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN D. MINTON, JR., JUDGE
ACTION NO. 97-CR-00362

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUIDUGLI, JOHNSON, AND KNOPF, JUDGES.

KNOPF, JUDGE: In August 1997, Mark Richardson pled guilty in Warren Circuit Court to murder,¹ first-degree robbery,² and fifteen counts of second-degree forgery.³ By judgment entered August 27, 1997, the court sentenced him to concurrent terms of imprisonment totaling fifty years. In September 2001, more than

¹ KRS 507.020.

² KRS 515.020.

³ KRS 516.030.

four years after entry of the judgment, Richardson moved for relief from his plea on the ground that prescription medications he was receiving at the time plus the stress of his situation had rendered him incompetent to plead guilty. By order entered January 24, 2002, the trial court summarily denied Richardson's motion. Richardson contends on appeal that he is entitled at least to the retrospective competency hearing discussed in Thompson v. Commonwealth.⁴ We disagree and affirm.

Although Richardson is correct that the validity of his guilty plea depends on his having been competent to make it, absent some substantial reason for doubt, his competency is to be presumed.⁵ Richardson's plea colloquy suggests no reason to doubt his competence. Not only did he swear that his judgment was not impaired by drugs, but his demeanor, which was alert and focused and plainly comprehending, betrayed no hint of impairment. If he was impaired, therefore, it was up to Richardson to raise the issue in a timely manner.⁶ We agree with the Commonwealth that in this case four years after the fact is not timely.

⁴ Ky., 56 S.W.3d 406 (2001).

⁵ Conley v. Commonwealth, Ky. App., 569 S.W.2d 682 (1978).

⁶ *Id.*

RCr 11.42, the rule most commonly invoked for collateral review of criminal convictions, provides in pertinent part that

[a]ny motion under this rule shall be filed within three years after the judgment becomes final, unless the motion alleges and the movant proves . . . that the facts upon which the claim is predicated were unknown to the movant and could not have been ascertained by the exercise of due diligence.

Obviously, if Richardson was impaired at the time of his guilty plea he knew it then or soon thereafter. The rule required him, therefore, to assert his claim for relief within three years of his final judgment or be deemed to have waived it. Ignorance of the law underlying his claim does not excuse the delay. Everyone, after all, is presumed to know the law.⁷

Against this result, Richardson's invocation of CR 60.02 is of no avail. That rule does permit a trial court to relieve a party from a final judgment for "any . . . reason of an extraordinary nature justifying relief." But in general CR 60.02 does not provide a second chance to seek the relief available pursuant to RCr 11.42. "Final disposition of [a] motion [under RCr 11.42] or waiver of the opportunity to make it, shall conclude all issues that reasonably could have been

⁷Oppenheimer v. Commonwealth, 305 Ky. 147, 202 S.W.2d 373 (1947).

presented in that proceeding.”⁸ Richardson has offered no extraordinary reason for his delay. He could and should have brought his motion within the time allowed by RCr 11.42. His waiver of that opportunity precludes his resort to CR 60.02 now. Accordingly, we affirm the January 24, 2002, order of the Warren Circuit Court denying Richardson’s motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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⁸ Gross v. Commonwealth, Ky., 648 S.W.2d 853, 857 (1983) (emphasis added).