

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000549-MR

WILLIAM A. YOUNG

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 99-CR-00509

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: HUDDLESTON, PAISLEY AND TACKETT, JUDGES.

PAISLEY, JUDGE. This is a pro se appeal from an order entered by the Kenton Circuit Court denying appellant's motion for RCr 11.42 relief in which appellant requested an evidentiary hearing. Finding no error, we affirm.

In August 1999, appellant drove his vehicle into a motorcycle, causing serious injuries to the rider. Appellant then exited his vehicle and proceeded to kick the victim before fleeing the scene. Upon his arrest a few hours later, police

discovered that appellant was legally drunk and driving on a suspended license. He was subsequently indicted for assault in the first degree, DUI, operating a motor vehicle while his license was revoked or suspended, and being a first degree persistent felony offender (PFO).

Soon after his indictment, appellant requested a competency evaluation. Following the evaluation and a hearing, the court determined that appellant was competent to stand trial. At that time, appellant and his trial counsel negotiated a plea agreement with the Commonwealth which provided for dismissal of the PFO, amendment of the assault charge to second degree assault, and a sentence recommendation of ten years' imprisonment. The trial court accepted appellant's guilty plea as being knowingly, intelligently, and voluntarily entered, and he was sentenced to ten years in prison. Appellant subsequently filed an RCr 11.42 motion in which he requested an evidentiary hearing. The trial court denied appellant's motion, and this appeal followed.

Appellant asserts various arguments to support his request for relief and an evidentiary hearing. First, appellant appears to question the validity of a prior conviction in another case. However, that case is not properly before us at this time, and any issues relating to that conviction shall not be considered in this appeal.

Appellant next argues that he received ineffective assistance of counsel because his trial attorney allegedly failed to provide sound and proper advice, failed to call appellant's doctor to testify at the competency hearing, failed to inform appellant of the facts and evidence that the Commonwealth alleged, and coerced appellant into pleading guilty. It is well settled that issues which are not presented to the trial court cannot be raised for the first time on appeal. Regional Jail Authority v. Tackett, Ky., 770 S.W.2d 225, 228 (1989). See also, Cabbage Patch Settlement House v. Wheatly, Ky., 987 S.W.2d 784, 786 (1999). As appellant failed to raise this argument before the trial court in his RCr 11.42 motion, we shall not address it on appeal.

Appellant next argues that KRS 197.035 requires his sentence to be run concurrently with his prior sentence for burglary. We summarily reject this argument in light of the clear directive set out in KRS 533.060, which requires the consecutive service of these sentences because appellant was on parole for his burglary conviction when he engaged in his latest felonious act. See White v. Commonwealth, Ky. App., 32 S.W.3d 83 (2000). Further, we are not persuaded by appellant's argument that there is no precedent for concluding that the language of KRS 533.060 controls over the language contained in KRS 197.035, as we believe that the same reasoning employed in

White and similar cases to establish the primacy of KRS 533.060 over KRS 532.110 equally applies to KRS 197.035.

Next, appellant asserts that he was incompetent to either stand trial or enter a guilty plea, with the result that he did not knowingly, voluntarily, and intelligently waive his right to trial. As a general matter, "there is no higher mental standard required to enter a guilty plea than there is to stand trial." Conley v. Commonwealth, Ky. App., 569 S.W.2d 682, 684 (1978) (citations omitted). Further, "Kentucky appellate courts have recognized that 'the trial court is in the best position to determine if there was any reluctance, misunderstanding, involuntariness, or incompetence to plead guilty' at the time of the guilty plea" Bronk v. Commonwealth, Ky., 58 S.W.3d 482, 487 (2001).

Here, the trial court conducted a competency hearing as required by RCr 8.06 and KRS 504.100, and within its discretion, it found appellant was competent to stand trial. In the absence of any additional evidence of incompetence at the time of appellant's guilty plea, there is no basis upon which to find that his plea was entered involuntarily or without his understanding. Conley, 569 S.W.2d at 684. In addition, we note that the trial court took great pains to ensure that appellant understood the guilty plea proceedings despite his illiteracy, by reading documents to him and by speaking in common terms

rather than in legal jargon. Given the totality of the circumstances, there is simply no evidence to show that appellant's plea was anything but voluntary. See Rodriguez v. Commonwealth, Ky., 87 S.W.3d 8, 10 (2002) (citing Brady v. United States, 397 U.S. 742, 749, 90 S.Ct. 1463, 1469, 25 L.Ed.2d 747, 757 (1970)).

Appellant also asserts that he was under extreme emotional distress at the time of the accident, and that the Commonwealth could not have established that he possessed the requisite mental state to be convicted if this case had gone to trial. However, these allegations are not relevant to this appeal since appellant entered a valid guilty plea and waived his right to trial. "Entry of a voluntary, intelligent plea of guilty has long been held by Kentucky Courts to preclude a post-judgment challenge to the sufficiency of the evidence." Taylor v. Commonwealth, Ky. App., 724 S.W.2d 223, 225 (1986) (citation omitted).

Finally, appellant requests appointment of counsel to supplement his appeal and to provide him with assistance. However, making such an appointment is a function of the trial court. Further, RCr 11.42(5) provides that in a situation such as this, a trial court need only appoint counsel if an evidentiary hearing on the issues is required. See Fraser v. Commonwealth, Ky., 59 S.W.3d 448, 453 (2001). As the issues

raised in appellant's RCr 11.42 motion have been entirely resolved through a review of the record, an evidentiary hearing was clearly not necessary, and the appointment of counsel was therefore not required.

The order of the Kenton Circuit Court denying appellant's request for RCr 11.42 relief is affirmed.

ALL CONCUR.

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