

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000874-MR

DOUGLAS EDWARD MILLER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
INDICTMENT NO. 01-CR-00225

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND JOHNSON, JUDGES.

DYCHE, JUDGE. On September 20, 1999, Douglas Edward Miller escaped from the Blackburn Correctional Complex in Fayette County, Kentucky. Miller was indicted on February 26, 2001, for Escape in the Second Degree (KRS 520.030) and for the status offense of Persistent Felony Offender in the First Degree (PFO I) (KRS 532.080). Miller was tried by jury on February 26, 2002, and found guilty as charged; he received a sentence of

five years' imprisonment for escape, enhanced to eleven years' imprisonment for PFO I.

Miller appeals, arguing first that his conviction is infirm because the trial court failed to order an evaluation and competency hearing pursuant to KRS 504.100. We disagree. "The standard of review of such a case is, [w]hether a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced doubt with respect to competency to stand trial.'" Thompson v. Commonwealth, Ky., 56 S.W.3d 406, 408 (2001), citing Mills v. Commonwealth, Ky., 996 S.W.2d 473, 486 (1999), cert. denied, 528 U.S. 1164 (2000).

Miller offers nothing to support this assertion other than the fact that he had two public defenders appointed to represent him and the second attorney stated on the record that Miller was a difficult client. Miller has failed to convince us that a reasonable judge thus would have experienced doubts regarding appellant's competency to stand trial. Miller's extensive criminal history included no record of mental problems, nor does he suggest that his challenging personality actually prevented him from being able to assist in his defense. We find no error in the trial court's failure to order the KRS 504.100 evaluation and hearing.

Miller secondly argues that the trial court erred in failing to give Miller's requested instruction on choice of evils. KRS 503.030. Again we cannot agree with appellant. Miller contends that he was forced to escape in order to avoid possibly assaulting another inmate in self-defense, and that questions of "imminence and reasonableness should be left to the jury." However, Miler fails to demonstrate, both here and before the trial court, the requisite "specific and imminent threat to his person in order to justify the giving of the instruction." Damron v. Commonwealth, Ky., 687 S.W.2d 138, 139 (1985); see also Montgomery v. Commonwealth, Ky., 819 S.W.2d 713, 719 (1991). The trial court correctly denied the giving of the choice of evils instruction.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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