

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000004-MR

TROY DEWAYNE HUGHES

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 99-CR-00280

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND McANULTY, JUDGES.

BARBER, JUDGE: Appellant Troy Hughes appeals pro se from the Fayette Circuit Court's denial of his motion to receive a copy of the court records in his case.

Hughes was charged with the murder of his wife. Hughes entered a conditional plea of guilty to the charge against him. At sentencing the Commonwealth recommended a sentence of life imprisonment. The trial court sentenced Hughes to forty years

imprisonment. This sentence was affirmed on appeal by the Kentucky Supreme Court.

Hughes asserts that defense counsel never informed him that there was a lesser included offense of first degree manslaughter, which carried a maximum penalty of twenty years. Hughes argues that he was given ineffective assistance of counsel at the trial level. Hughes has not yet filed a motion for post-conviction relief.

After his appeal was final, Hughes filed a "Motion to Obtain Court Records," with the stated intent of later filing a motion to vacate pursuant to RCr 11.42. The circuit court denied the motion, stating that Hughes had failed to set forth any specific reason that he needs a copy of the court records, and that the motion was a "fishing expedition" not permitted by law.

Hughes asserts that he is entitled to a copy of the court records in his action prior to filing his RCr 11.42 motion. The Commonwealth argues that absent a sufficient RCr 11.42 motion, Hughes is not entitled to a copy of the court records prepared at state expense. In Gilliam v. Commonwealth, Ky., 652 S.W.2d 856 (1983), the Kentucky Supreme Court held that an indigent defendant was entitled to a copy of the court record only where he is preparing a timely appeal as of right, or where his 11.42 motion shows a valid basis for relief. Id., at 858.

The Gilliam Court denied defendants a transcript at state expense absent a valid basis for relief. 652 S.W.2d at 859.

The Kentucky Supreme Court has held that a motion made prior to the filing of a valid RCr 11.42 motion is a "legal nonentity", and that a court may not grant such a motion. Bowling v. Commonwealth, Ky., 964 S.W.2d 803, 804 (1998). A free transcript is to be provided to an indigent defendant only where his post-conviction motion "sets out grounds which on their face establish a valid basis on which relief may be granted." Coles v. Commonwealth, Ky., 386 S.W.2d 465, 466 (1965). "If the petitioner files a sufficient motion under RCr. 11.42, his rights will be fully protected and his counsel will have all records available." Jones v. Breslin, Ky., 385 S.W.2d 71, 72 (1964).

Even where a valid motion for post-conviction relief is filed, the court may not be required to provide a full copy of the trial court's records. The Court must provide only that portion of the records which is reasonably necessary and relevant to the issues raised in the 11.42 motion. See Sullivan v. Commonwealth, Ky., 655 S.W.2d 487, 488 (1983). The purpose of RCr. 11.42 is to provide a forum for known grievances, and not to provide an opportunity to search for grievances. Haight v. Commonwealth, Ky., 41 S.W.3d 436, 441 (2001).

While this Court notes that Hughes' desire to provide a fully researched and supported motion for post-conviction relief is laudable, the law does not permit a copy of the record to be provided to an indigent defendant in absence of a valid motion for RCr 11.42 relief. In the absence of such a motion, we affirm the trial court's denial of the request for a copy of the record.

ALL CONCUR.

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