

Commonwealth Of Kentucky

Court Of Appeals

NOS. 2003-CA-000790-MR & 2003-CA-001025-MR

TERRY MILLS

APPELLANT

v. APPEAL FROM McCracken Circuit Court
HONORABLE R. JEFFERY HINES, JUDGE
ACTION NOS. 02-CR-00037 & 02-CR-00053

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

KNOPF, JUDGE: Terry Mills appeals pro se from an order of the McCracken Circuit Court, entered April 24, 2003, denying his motion for relief from two criminal convictions. Mills contends that a biased grand juror tainted the indictments in the two cases. We agree with the circuit court that Mills has failed to allege facts that would entitle him to relief.

In January 2002, a McCracken grand jury indicted Mills for several drug and firearm offenses. In February 2002 a second grand jury indicted him for possessing a homemade knife

in the McCracken County jail. In June 2002, a third grand jury reindicted Mills in both cases and added charges that he is a persistent felon. The elected McCracken County Jailer served as foreperson on this third grand jury. Mills eventually pled guilty in both cases and was sentenced to consecutive terms of imprisonment of twenty and three years. Mills contends that the jailer knew him and was biased against him and that his participation on the June grand jury tainted the indictments.

For the purposes of this appeal, we may assume that the jailer's alleged familiarity with Mills disqualified him from serving on Mills's grand jury. We nevertheless agree with the circuit court that Mills is not entitled to the relief he seeks.

First, we agree with the trial court that Mills waived his right to object to the alleged defect in the grand jury proceedings. Objections to such defects must be lodged in a timely manner, which means as soon as they are discovered or could have been discovered by the exercise of reasonable diligence.¹ Here, Mills could have known of the jailer's participation as soon as the June indictment was issued, but he made no objection until after the cases were resolved. Mills's

¹ Stephenson v. Commonwealth, Ky., 982 S.W.2d 200 (1998); Commonwealth v. Nelson, Ky., 841 S.W.2d 628 (1992).

delay and his guilty pleas both served to waive any objection to the jailer's participation.²

Even if Mills's objection were timely, moreover, it would not merit relief. An indictment will not be quashed unless the defect in the proceedings was prejudicial; that is, unless in the absence of the defect the indictment is likely not to have been issued.³ Here, untainted grand juries had indicted Mills for the underlying offenses, and Mills concedes the merits of the persistent-felon charges added by the allegedly tainted grand jury. Plainly, even an untainted grand jury is likely to have issued the June indictments.

Because Mills's objection to the June indictments was untimely and because the alleged defect in those indictments was clearly not prejudicial, we affirm the April 24, 2003, order of the McCracken Circuit Court.

All CONCUR.

BRIEFS FOR APPELLANT:

Terry Mills, pro se
Eddyville, Kentucky

BRIEFS FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Anitria M. Alo
Assistant Attorney General
Frankfort, Kentucky

² Stephenson v. Commonwealth, *supra*; Skaggs v. Commonwealth, Ky. App., 885 S.W.2d 318 (1994).

³ Commonwealth v. Baker, Ky. App., 11 S.W.3d 585 (2000).