

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001533-MR

ODELL KINTE MARTIN

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE CHARLES W. BOTELEER, JR., JUDGE
ACTION NO. 01-CR-00044

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: GUIDUGLI, McANULTY AND MINTON, JUDGES.

GUIDUGLI, JUDGE. Odell Kinte Martin ("Martin") appeals from an order of the Hopkins Circuit Court denying his RCr 11.42 motion to vacate his criminal sentence. We affirm.

On February 13, 2001, the Hopkins County Grand Jury indicted Martin on charges of first degree trafficking in a controlled substance (cocaine), trafficking in marijuana within 1000 yards of a school, possession of drug paraphernalia, second-degree unlawful transaction with a minor, kidnapping, and

first-degree persistent felony offender ("PFO"). The charges arose from an incident occurring on December 22, 2000, after which the police received a report that Martin had abducted Troy Washington ("Washington"). The abduction and forcible detention allegedly resulted from a dispute over drug sales. When a search warrant was executed at the home of Mary Pettus ("Pettus"), where the detention was alleged to have occurred, police found Martin along with 44 grams of cocaine, 5 grams of marijuana, and more than \$13,000 in cash.

Trial on the charges commenced on June 19, 2001, whereupon Martin was found guilty of first-degree trafficking in a controlled substance (cocaine), trafficking in marijuana within 1000 yards of a school, second-degree unlawful imprisonment, and second-degree unlawful transaction with a minor. Martin subsequently was found guilty on the PFO charge, and the jury recommended a sentence of 10 years on the cocaine trafficking charge, five years for the marijuana trafficking charge, five years for the unlawful transaction charge, and 12 months for unlawful imprisonment. On August 23, 2001, the trial court adopted the jury's recommendation and sentenced Martin to a maximum of 10 years imprisonment.

Martin then prosecuted a direct appeal to this court, arguing that he was entitled to a directed verdict at trial. A panel of this Court affirmed his conviction and sentence by way

of an unpublished opinion rendered on February 28, 2003. The Supreme Court of Kentucky denied Martin's motion for discretionary review on August 13, 2003.

On May 12, 2003, Martin filed a pro se motion in Hopkins Circuit Court seeking to vacate, set aside, or correct his conviction and sentence pursuant to RCr 11.42. He argued that the trial court committed errors in allowing evidence to be presented concerning his co-defendant's plea, that the court should have granted a directed verdict because there was insufficient evidence to support the conviction, and that the jury instructions were improper. The motion was denied by order of the Hopkins Circuit Court rendered on June 23, 2003, and this appeal followed.

Martin now argues that the circuit court committed reversible error in denying his RCr 11.42 motion for relief. He claims that the trial court erred in allowing the Commonwealth to elicit testimony from the co-defendant and his counsel regarding that defendant's guilty plea; that the evidence against Martin was not sufficient to support his convictions for trafficking in cocaine and marijuana, unlawful transaction, and PFO; and, that the jury instructions on the trafficking charges were improper and denied him a unanimous verdict. He also argues that the trial court improperly disposed of the RCr 11.42

motion without appointing counsel and granting an evidentiary hearing. He seeks an order vacating his conviction.

We have closely examined the record and the law, and find no error in the Hopkins Circuit Court order denying Martin's motion for relief. We need not engage in a protracted analysis of Martin's arguments, as the circuit court properly concluded that his claims of error should have been brought, if at all, on direct appeal rather than by way of RCr 11.42.

RCr 11.42 is a mechanism for collaterally attacking a judgment of conviction. RCr 11.42; Commonwealth v. Basnight, Ky.App., 770 S.W.2d 231 (1989). It is limited to issues which cannot be raised on direct appeal, and was not designed to give a convicted defendant an additional appeal. Id.; Sanders v. Commonwealth, Ky., 89 S.W.3d 380 (2002), citing Sanborn v. Commonwealth, Ky., 975 S.W.2d 905 (1998).

In the matter at bar, each of the issues raised by Martin in his motion for RCr 11.42 relief could have been raised on direct appeal. Alleged improper testimony of a co-defendant, insufficient evidence to support a conviction, and improper jury instructions are all claims of error properly brought, if at all, as part of a direct appeal of a conviction. Martin was availed of the opportunity to present these issues in his 2002 appeal and did not. When the Supreme Court of Kentucky denied Martin's motion for discretionary review, it closed the window

of direct appeal, and he may not now reopen it via a collateral attack on the judgment. The trial court's conclusion on this issue was proper, and we find no error.

We are not persuaded that the trial court erred in disposing of Martin's motion without the benefit of a hearing. An evidentiary hearing is not required where the motion may be adjudicated by reference to the record alone. Stanford v. Commonwealth, Ky., 854 S.W.2d 742 (1993). Such was the case herein, and the trial court properly ruled on the motion without conducting a hearing.

For the foregoing reasons, we affirm the order of the Hopkins Circuit Court denying Martin's motion for relief from judgment.

ALL CONCUR.

BRIEF FOR APPELLANT:

Odell Kinte Martin
Fredonia, KY

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

Tami Allen Stetler
Assistant Attorney General
Frankfort, KY