

RENDERED: March 11, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-001940-MR

JERRY WAYNE WELCH

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE ROBERT M. SHORT, JUDGE
ACTION NO. 93-CR-00002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF AND TACKETT, JUDGES; EMBERTON, SENIOR JUDGE.¹

TACKETT, JUDGE: Jerry Welch appeals from an order of the Daviess Circuit Court denying his motion for post-conviction relief pursuant to Kentucky Rule of Civil Procedure (CR) 60.02. He alleges that the trial court erroneously determined, without a hearing, that his attorney failed to communicate a plea offer

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

to him. We find that Welch has not presented any evidence of a plea offer in his case. The judgment of the trial court is affirmed.

In 1994, Welch was convicted by a jury of two counts of attempted murder, three counts of first-degree burglary, kidnapping, and being a persistent felony offender in the second degree. He pled guilty to being a convicted felon in possession of a handgun. The trial court sentenced Welch to life imprisonment, and the Kentucky Supreme Court upheld the convictions on direct appeal. In 1998, Welch became aware that the Commonwealth's Attorney had written letter to his trial counsel soliciting offers to resolve pending criminal cases without a jury trial. Welch filed a CR 60.02 motion in July 2003, claiming that his trial counsel was ineffective for failing to advise him that the Commonwealth had offered a plea bargain. The trial court determined that the Commonwealth's letter was not an offer of leniency in Welch's case which his counsel would have been under a duty to disclose and denied the motion without an evidentiary hearing. This appeal followed.

Welch argues that the letter from the Commonwealth was an offer to plea bargain and, that if his counsel had informed him of it, he would have accepted the offer instead of taking his case to trial. The letter, which made no mention of Welch's case or any other specific case, states as follows:

Our caseload is now approaching 250 cases. This number includes multiple defendants and multiple count indictments. The point being, that the number 250 does not fairly represent the pending caseload, as many of the pending cases will require separate trials of the defendants or separate trials of the charges.

As you know, the last week of this month's trial term has been continued, and I am advised that the upcoming Grand Jury is stacking up to result in a significant number of new indictments.

I am telling you this so you will know that we are amenable to resolving any pending case upon any reasonable ground. If there is any possibility of resolving a case short of a trial, please contact me so that I may get in touch with the victim and move some of these cases along.

We agree with the trial court's finding that the Commonwealth's letter did not contain an offer directed to Welch. Counsel was under no duty to inform Welch of a plea bargain because none was offered. Thus, Welch fails to demonstrate ineffective assistance on the part of his trial counsel, and the trial court correctly denied his motion.

For the foregoing reason, the judgment of the Daviess Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jerry Wayne Welch, Pro Se
Central City, Kentucky

BRIEF FOR APPELLEE:

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