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Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000632-MR

RONNIE MARDIS

APPELLANT

APPEAL FROM MARSHALL CIRCUIT COURT
v. HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 02-CR-00100

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** **

BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BUCKINGHAM, JUDGE: Ronnie Mardis appeals from an order of the Marshall Circuit Court denying his motion to vacate judgment pursuant to CR¹ 60.02. The issue is whether Mardis should be granted relief from his conviction and 12-year sentence for manufacturing methamphetamine in light of the Kentucky Supreme Court's later decision in Kotila v. Commonwealth, 114 S.W.3d 226 (Ky. 2003). We conclude that the trial court properly denied Mardis's motion, and we thus affirm.

¹ Kentucky Rules of Civil Procedure.

In September 2002, a Marshall County grand jury indicted Mardis for the offenses of manufacturing methamphetamine, theft by unlawful taking under \$300, and possession of a prescription drug in an improper container. Pursuant to a plea agreement with the Commonwealth, Mardis pled guilty to manufacturing methamphetamine and was sentenced by the court to 12 years in prison, to run concurrently with a sentence from the Calloway Circuit Court. The remaining two charges were dismissed.

In February 2004, Mardis filed a motion to vacate judgment pursuant to CR 60.02. In support of his motion, Mardis cited the Kentucky Supreme Court's decision in the Kotila case, wherein the court held that it must be proven that a defendant had possessed either all of the chemicals or all of the equipment necessary for the manufacture of methamphetamine before the defendant may be found guilty under KRS² 218A.1432(1)(b). Id. at 240-41.

In an order entered on March 16, 2004, the trial court denied the motion. The court stated:

The Defendant correctly states the holding in Kotila. However, the Court finds that the Defendant entered a knowing and voluntary plea of guilty. He stated he was satisfied with his attorney and the representation he was afforded. He clearly stated that he was entering into a guilty

² Kentucky Revised Statutes.

plea as being in his best interest to do so. A guilty plea waives any defenses that might be raised and the Defendant has clearly waived any defenses to these charges.

Mardis's appeal herein followed.

Mardis states generally in his brief that his conviction "should be vacated pursuant to CR 60.02 because the Kentucky Supreme Court has clarified the meaning of KRS 218A.1432(1)(b) thereby making it apparent that the Appellant's conduct did not constitute a crime." He makes three specific arguments in this regard. We will address each of them below.

Mardis's first argument is that since he did not possess either all of the chemicals or all of the equipment necessary for the manufacture of methamphetamine, then he did not commit the crime. Mardis is correct that, following the Kotila case, the statute has been clarified to mean that a person cannot be convicted under KRS 218A.1432(1)(b) for possessing some, but not all, of the chemicals, or for possessing some, but not all, of the equipment necessary to manufacture methamphetamine. Mardis is also correct that he did not possess either all of the necessary chemicals or all of the necessary equipment. In essence, he is arguing that the evidence was insufficient to convict him of the offense.

While that may be so, Mardis overlooks the fact that he pled guilty to the offense. "Kentucky courts have long held

that a guilty plea precludes a post-judgment challenge to the sufficiency of the evidence." Johnson v. Commonwealth, 103 S.W.3d 687, 696 (Ky. 2003). We reject Mardis's argument for that reason.

Mardis's second argument is that federal due process mandates that his conviction be vacated. In support of his argument, Mardis cites Fiore v. White, 531 U.S. 225, 121 S.Ct. 712, 148 L.Ed.2d 629 (2001), and Davis v. United States, 417 U.S. 333, 94 S.Ct. 2298, 41 L.Ed.2d 109 (1974). We agree with the Commonwealth that Mardis's reliance on those two cases is misplaced because they involved convictions following jury trials rather than convictions following guilty pleas.

By pleading guilty to the charge, Mardis admitted the factual accuracy of the elements of the offense. See Taylor v. Commonwealth, 724 S.W.2d 223, 225 (Ky.App. 1986). In doing so, he forfeited the right to claim at a later date that the state could not have proven him guilty of the crime. Id. In Fiore, the defendant was convicted on less than sufficient evidence. Here, however, by pleading guilty, Mardis conceded that the evidence against him was sufficient. "[A] counseled plea of guilty is an admission of factual guilt so reliable that, where voluntary and intelligent it quite validly removes the issue of factual guilt from the case." Menna v. New York, 423 U.S. 61, 63 n.2, 96 S.Ct. 241, 46 L.Ed.2d 195 (1975).

Mardis's third argument is that his guilty plea did not waive his right to attack his conviction of the offense. He acknowledges the general rule that a voluntary, intelligent guilty plea waives all defenses except that the indictment does not charge the defendant with an offense. See Hughes v. Commonwealth, 875 S.W.2d 99, 100 (Ky. 1994). He contends, however, that the rule does not apply where the guilty plea was not entered knowingly, voluntarily, and intelligently.

In support of his argument, Mardis cites Bousley v. United States, 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998). Therein, the U.S. Supreme Court reiterated its prior holding that "a plea does not qualify as intelligent unless a criminal defendant first receives 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.'" 523 U.S. at 618 [citation omitted]. The Court in Bousley held that if the defendant could prove that neither he, nor his counsel, nor the court correctly understood the essential elements of the crime with which he was charged, then his guilty plea and conviction would be constitutionally invalid. Id.

This case is distinguishable from the Bousley case. Here, Mardis understood the nature of the charge against him. See Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). The fact that the Kentucky Supreme Court

clarified the quantum of evidence needed to convict under KRS 218A.1432(1)(b) after Mardis pled guilty does not affect the validity of his guilty plea.

The standard of review for the denial of a CR 60.02 motion is whether the trial court abused its discretion. See Brown v. Commonwealth, 932 S.W.2d 359, 362 (Ky. 1996). CR 60.02 is an extraordinary remedy and, absent an abuse of discretion, a circuit court's denial of relief will be affirmed. See Barnett v. Commonwealth, 979 S.W.2d 98, 102 (Ky. 1998). Here, the court did not abuse its discretion. Rather, it properly denied the motion.

The order of the Marshall Circuit Court is affirmed.

ALL CONCUR.

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