

RENDERED: April 15, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000805-MR

OLIVER B. QUILLEN

APPELLANT

v. APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 03-CI-00336

JAMES HERALD

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: McANULTY AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Oliver B. Quillen brings this pro se appeal from a March 2, 2004, order of the Letcher Circuit Court. We affirm.

In Indictments Nos. 96-CR-00017 and 96-CR-00056, appellant was charged with committing numerous offenses including first-degree rape. Appellee was appointed by the circuit court as appellant's trial counsel. A jury eventually

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 Kentucky Revised Statutes 21.580.

convicted appellant on all counts, and he was sentenced to life imprisonment. Appellant's conviction and sentence was affirmed by the Kentucky Supreme Court in Appeal No. 97-SC-000273-MR. This Opinion became final on December 10, 1998. In December 1999, appellant alleges that he filed a pro se petition for habeas corpus relief in the United States District Court for the Eastern District of Kentucky. The District Court denied habeas corpus relief in October 2002.

On October 6, 2003, appellant filed a legal malpractice action against appellee in Letcher Circuit Court. Appellant alleged that appellee negligently represented him by failing "to properly preserve and/or otherwise object to various trial irregularities and constitutional violations." Appellant's Brief at 7. Appellee answered and filed a Ky. R. Civ. P. 12 motion to dismiss for failure to state a claim upon which relief can be granted. Therein, appellee argued that Kentucky Revised Statutes (KRS) 413.245 provides for a one year statute of limitations for legal malpractice actions. Appellee claimed appellant filed this malpractice action well outside the one-year limitation period provided in KRS 413.245. On March 2, 2004, the circuit court entered an order dismissing appellant's action, thus precipitating this appeal.

Appellant contends the circuit court committed reversible error by dismissing his legal malpractice action

against appellee. Specifically, appellant claims the malpractice action did not accrue until the District Court denied his habeas corpus relief in October 2002, thus rendering the filing of his action timely. Appellant particularly argues that he "may have been aware of counsel's deficient performance when the Kentucky Supreme Court denied his direct appeal, the legal injury and the full ramifications of that injury did not become fixed or non-speculative [sic] until determination by the U.S. District Court denied Habeas Corpus relief on October 23, 2002." Appellant's Brief at 9-10. Essentially, appellant believes the "injury" flowing from appellee's alleged malpractice did not become fixed and nonspeculative until the habeas corpus petition was denied. We disagree.

In Stephens v. Denison, 64 S.W.3d 297 (Ky.App. 2001), the Court held:

However, because there was an appeal of the conviction to the Supreme Court, based upon the principles set forth in Michels v. Sklavos, Ky., 869 S.W.2d 728 (1994) and Hibbard v. Taylor, Ky., 837 S.W.2d 500 (1992), **the statute of limitations did not begin to run until September 16, 1999, the date Stephens's appeal in the criminal case became final. Not until this date did Stephens's damages become fixed and nonspeculative, and, pursuant to Michels and Hibbard, the statute of limitations does not begin to run in a legal malpractice case until damages have become fixed and nonspeculative.**

Id. at 299 (emphasis added). Simply put, appellant's damages for the alleged legal malpractice became fixed and nonspeculative in December 1998 when his direct appeal to the Kentucky Supreme Court was affirmed. See Hibbard v. Taylor, 837 S.W.2d 500 (Ky. 1992). The fact that appellant filed a habeas corpus action in federal court has no effect on the running of the statute of limitations for a professional malpractice claim against the appellee. Accordingly, we hold the circuit court properly dismissed appellant's legal malpractice action as untimely.

For the foregoing reasons, the order of the Letcher Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Oliver B. Quillen, Pro Se
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Frank R. Riley, III
Whitesburg, Kentucky