

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001668-MR

JOHN WAYNE SKAGGS, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN P. RYAN, JUDGE
ACTION NO. 03-CR-002258

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, JOHNSON, AND McANULTY, JUDGES.

McANULTY, JUDGE: John Wayne Skaggs, Jr. appeals from an order of the Jefferson Circuit Court denying his motion pursuant to RCr 11.42 to vacate his conviction. In the court below, Skaggs argued that his counsel was ineffective for not ascertaining that Skaggs was improperly charged. On appeal, Skaggs generally abandons the ineffective assistance argument, but still challenges the legitimacy of his conviction on his belief that the facts did not support the charge. We affirm.

Skaggs was charged by information, RCr 6.04, with escape in the second degree. A person is guilty of escape in

the second degree when he escapes from a detention facility or, being charged with or convicted of a felony, he escapes from custody. KRS 520.030. Pursuant to a plea agreement, Skaggs pled guilty to the charge, and the Commonwealth recommended a four year sentence and agreed not to indict Skaggs as a persistent felony offender. Skaggs was sentenced to four years imprisonment in accordance with the plea agreement.

Skaggs timely filed an RCr 11.42 motion alleging that his counsel was ineffective in failing to investigate the facts of his case. Skaggs acknowledged that when the offense occurred he was in the process of being admitted to the Home Incarceration Program to serve his sentence from his residence. In his memorandum of law in support of the motion, he stated that he was in the "Lobby-Basement area of the Home Incarceration Program" located in the Hall of Justice Building in Louisville waiting to be equipped with a monitoring device and to be informed of the rules and regulations of the program. He admitted that, after the officer in the Home Incarceration Program removed handcuffs from him while he was waiting; he "walked out of the Home Incarceration Program freely without restraint on August 11, 2003." Skaggs asserted that this only constituted the misdemeanor offense of Escape in the Third Degree. He argued that his attorney failed to investigate the

charge and the law, and so failed to object to the information and failed to properly advise him concerning his plea.

The court ruled on the merits of Skaggs' argument. The court found that escape in the second degree, KRS 520.030, was properly charged since Skaggs was in custody at the time of the offense and because the building that he escaped from was a detention facility. Skaggs filed a motion to alter, amend or vacate that decision, and the trial court entered a second opinion and order. The court's opinion addressed Skaggs' argument that he was not in custody because the jail's central computer system listed him as having been released. The court essentially held that the custody requirement did not have to be met in order to find Skaggs guilty of escape in the second degree, since without question Skaggs was in a building which fit the definition of a detention facility. The court denied Skaggs' motion to alter, amend or vacate its previous order denying RCr 11.42 relief. Skaggs appeals the order denying his RCr 11.42 motion.

On appeal, Skaggs argues that it was unconstitutional to convict him of escape in the second degree as an arbitrary exercise of governmental power, and as a violation of equal protection principles. In addition, he argues that the Hall of Justice building was not a detention facility since he had not been entered in the Home Incarceration Program, that the circuit

court lacked subject matter jurisdiction, and that his conviction for escape in the second degree was void ab initio.

First, Skaggs' failure to raise many of these issues in his RCr 11.42 motion before the court below forecloses his ability to have them reviewed on appeal. An issue must be raised at the trial court level by way of an RCr 11.42 motion and denied before this court may consider it on appeal. Brock v. Commonwealth, 479 S.W.2d 644 (Ky. 1972). In addition, having pled guilty, Skaggs waived his right to appeal or to challenge the facts supporting his conviction. A plea of guilty waives all defenses other than that the indictment failed to charge an offense. Centers v. Commonwealth, 799 S.W.2d 51, 55 (Ky.App. 1990). Moreover, appellant's allegations do not present any legal basis for affording him the relief he has requested.

In addition, we affirm the trial court's conclusion that Skaggs failed to establish that his attorney was ineffective. The court found that the facts supported a charge of escape in the second degree. The burden is on the movant to overcome the strong presumption that counsel's assistance was constitutionally sufficient. Jordan v. Commonwealth, 445 S.W.2d 878 (Ky. 1969). Skaggs has failed to show that his attorney's performance fell outside the range of professionally competent assistance, as required for a showing of attorney ineffectiveness. Strickland v. Washington, 466 U.S. 668, 104 S.

Ct. 2052, 80 L. Ed. 2d 674 (1984); Sparks v. Commonwealth, 721 S.W.2d 726, 727-28 (Ky.App. 1986). As a result we conclude that Skaggs has raised no issue which would justify vacating his conviction.

For all the foregoing reasons we affirm the order of the Jefferson Circuit Court which denied Skaggs' RCr 11.42 motion to vacate his conviction.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Wayne Skaggs, Jr.,
Pro Se
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Todd D. Ferguson
Assistant Attorney General
Frankfort, Kentucky