

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001843-MR

JEFF RENZ

APPELLANT

v. APPEAL FROM McCracken Circuit Court
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 98-CR-00279

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Jeff Renz, pro se, has appealed from an order of the McCracken Circuit Court entered on August 9, 2004, which summarily denied his motion pursuant to CR¹ 60.02(e) and (f)² to

¹ Kentucky Rules of Civil Procedure.

² CR 60.02 states, in part, as follows:

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: . . . (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time

vacate the judgment arising from his unconditional guilty plea to manufacturing methamphetamine. Having concluded that the trial court did not abuse its discretion by failing to hold an evidentiary hearing and by denying Renz's motion, we affirm.

According to the record, the Commonwealth provided the following in their bill of particulars and discovery. On November 28, 1998, Renz was observed riding in a vehicle driven by Richard Harper. The vehicle was stopped for traffic violations. Harper admitted that he was driving on a suspended license, and gave the police permission to search the vehicle. A search of the vehicle's trunk yielded 15 hypodermic needles, a leather tourniquet, a purple container with a scale, a baggie with methamphetamine, two spoons with residue, one orange jug with ammonia, six tubes with residue, five filters with residue, ten baggies with residue, one plastic container with a white substance, one green army bag with an anhydrous ammonia tank, one baggie with ether, one Coleman stove, one can of Coleman fuel, empty cans of ether, coffeemaker with filters, one bag with empty ephedrine pills, one empty bottle of ephedrine pills, saw blades, battery packs and batteries, duct tape, starting fluid, liquid fire, tape, and one fanny pack. Renz had no identification and identified himself as Robert Lee Hubbard of Illinois. A purple fanny pack, containing numerous items of drug paraphernalia and methamphetamine, was found between Renz's

legs in the passenger side of the vehicle. Harper gave a statement indicating that he got the recipe for cooking methamphetamine while in prison and started cooking methamphetamine three weeks before his arrest. He indicated that he and Renz were partners in manufacturing, having cooked approximately five times, with the last time being the day of the arrest.

On December 30, 1998, a McCracken County grand jury returned a joint indictment against Harper and Renz.³ Relative to this appeal, Renz was charged with manufacturing methamphetamine,⁴ when he "possessed the equipment for the manufacture of methamphetamine with the intent to manufacture methamphetamine." Renz was also charged with possession of a controlled substance in the first degree, first offense - methamphetamine,⁵ possession of drug paraphernalia,⁶ giving police officer false name/address,⁷ and being a persistent felony offender in the first degree (PFO I).⁸

³ 98-CR-00279-001 (Harper) and -002 (Renz).

⁴ Kentucky Revised Statutes (KRS) 218A.1432.

⁵ KRS 218A.1415.

⁶ KRS 218A.500.

⁷ KRS 523.100.

⁸ KRS 532.080.

On April 30, 1999, Renz, with the assistance of counsel, pled guilty, as charged in the indictment, and pursuant to the Commonwealth's recommendation would receive sentences of 20 years for manufacturing methamphetamine, five years for possession of a controlled substance, and 12 months each for the convictions for possession of drug paraphernalia and giving a false identity. Renz also pled guilty to the maximum sentence of 20 years on an amended count of PFO II.⁹ In so pleading, Renz indicated that he understood the charges against him and admitted that he did engage in the activities leading to those charges; further, his counsel stipulated to the factual basis supporting Renz's plea. After conducting a plea colloquy pursuant to Boykin v. Alabama,¹⁰ the trial court accepted the plea. Renz was sentenced pursuant to his guilty plea on July 9, 1999.

Over five years later, following Renz's unsuccessful attempt at shock probation¹¹ (not statutorily eligible) and an escape from custody, Renz filed a pro se motion to vacate his judgment of conviction and sentence pursuant to CR 60.02(e) and (f), specifically arguing error in regard to the manufacturing

⁹ An additional part of the recommendation, not at issue here, was that a sentence for two outstanding charges of felony theft by unlawful taking, KRS 514.030, would run concurrently with the sentences herein, and also that neither theft charge would be enhanced by a PFO conviction.

¹⁰ 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

¹¹ KRS 439.265.

methamphetamine conviction. As grounds for relief, Renz cited the Supreme Court of Kentucky's Opinion in Kotila v. Commonwealth,¹² which held that "KRS 218A.1432(1)(b)¹³ applies only when a defendant possesses all of the chemicals or all of the equipment necessary to manufacture methamphetamine." Renz contended that there was no evidence that he was in possession of all the chemicals or equipment necessary to manufacture methamphetamine. Renz also requested an evidentiary hearing and appointment of counsel.

On August 9, 2004, the trial court summarily denied Renz's motion, stating in part as follows:

[T]he defendant having been indicted for having the equipment for the manufacture of methamphetamine; the defendant having plead [sic] guilty to that offense, and his attorney having stipulated to the possession of the equipment necessary to manufacture methamphetamine. . . [emphasis original].

This appeal followed.¹⁴

In reviewing the denial of the extraordinary remedy sought by a CR 60.02 motion, we must determine whether the trial

¹² 114 S.W.3d 226, 240-41 (Ky. 2003), cert. denied, 540 U.S. 1198, 124 S.Ct. 1456, 158 L.Ed.2d 114 (2004).

¹³ We note that following Kotila, the 2005 Kentucky General Assembly amended KRS 218A.1432(1)(b). Renz was convicted under the same statute in effect as in Kotila.

¹⁴ We note that pursuant to Renz's request, the trial court appointed the Department of Public Advocacy (DPA) to represent him on appeal. The DPA moved to withdraw, indicating that, upon review of the record, it was not a proceeding that a reasonable person with adequate means would take, citing KRS 31.110(2)(c). On November 20, 2004, this Court granted the DPA's motion, and Renz was allowed to proceed pro se.

court abused its discretion.¹⁵ We find no abuse of discretion and affirm the trial court.

Before us, Renz argues that (1) his failure to have all the chemicals or equipment necessary to manufacture methamphetamine resulted in insufficient evidence to convict him of the offense; (2) pursuant to Kotila he was found guilty of conduct that did not constitute a crime, in violation of federal due process guarantees of adequate notice; and (3) because of the above, his guilty plea was not entered voluntarily, knowingly, or intelligently.

It is well settled that a voluntary and intelligent guilty plea "precludes a post-judgment challenge to the sufficiency of the evidence."¹⁶ Thus, Renz forfeited his right to attack any insufficiency in the evidence by pleading guilty. Additionally, by his plea, he conceded the sufficiency of the evidence against him, admitted to the factual accuracy of the elements of the charge of manufacturing methamphetamine, and thus forfeited his later claim that he could not have been proven guilty of the offense.¹⁷ The nature of the charge against Renz, manufacturing methamphetamine, was not changed by our

¹⁵ Brown v. Commonwealth, 932 S.W.2d 359, 362 (Ky. 1996).

¹⁶ Johnson v. Commonwealth, 103 S.W.3d 687, 696 (Ky. 2003); see also Taylor v. Commonwealth, 724 S.W.2d 223, 225 (Ky.App. 1986).

¹⁷ Taylor, 724 S.W.2d at 225.

Supreme Court in Kotila. Kotila merely interpreted the wording of the statute.¹⁸

Analyzing the plea further, we fail to see any constitutional infirmity. Renz was indicted for, and pled guilty to, possession of the equipment necessary to manufacture methamphetamine. Thus, his argument as to insufficiency of all chemicals necessary to manufacture methamphetamine is not applicable. However, according to Kotila, equipment necessary to manufacture methamphetamine include spoons, dishes, glassware, filtering material, funnels, hoses, and other household items.¹⁹ In Kotila the defendant possessed a glass vial, a Kerr Mason jar, a glass jar with a lid, a black cooking pot, a small glass jar, a weighing scale, three pieces of hose, a funnel, a wooden stirring spoon, and a cotton ball, items which the Court concluded could provide the jury with sufficient evidence of equipment used in the manufacture of methamphetamine.²⁰ Here, Renz was found with a scale, two spoons with residue, one jug with ammonia, six tubes with residue, five filters with residue, a plastic container with a white substance, a Coleman stove and a can of Coleman fuel, a coffeemaker with filters, saw blades, duct tape, and tape, in

¹⁸ Kotila, 114 S.W.3d at 237.

¹⁹ Id. at 236.

²⁰ Kotila, 114 S.W.3d at 236-37.

addition to the methamphetamine, baggies with residue, an anhydrous ammonia tank, a baggie with ether, empty cans of ether, empty ephedrine bottle boxes and pill bottle, battery packs and batteries, starting fluid, and liquid fire. Pursuant to Kotila, this was sufficient evidence of possession of the equipment to manufacture methamphetamine to support a conviction of manufacturing methamphetamine. Renz's plea was properly accepted after a Boykin colloquy. There was no constitutional infirmity.

As to Renz's second argument, an evidentiary hearing is required only if the movant "affirmatively allege[s] facts which, if true, justify vacating the judgment and further allege[s] special circumstances that justify CR 60.02 relief."²¹ Renz has failed to meet this burden.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Jeff Renz, Pro Se
Central City, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

Jeffrey A. Cross
Assistant Attorney General
Frankfort, Kentucky

²¹ Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983).