

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001941-MR

KURTIS D. MATEYCAK

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
CIVIL ACTION NO. 02-CR-00271

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: MINTON AND VANMETER, JUDGES; MILLER, SENIOR JUDGE.¹

MINTON, JUDGE: Kurtis Mateycak appeals from an order of the McCracken Circuit Court denying his motion for post-conviction relief pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. Mateycak alleges that his guilty plea to conspiracy to manufacture methamphetamine is void under Kotila v. Commonwealth² because he did not possess all of the precursors necessary to

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

² 114 S.W.3d 226 (Ky. 2003)

manufacture methamphetamine at the time of his arrest. As the trial court properly denied Mateycak's motion, we affirm.

In July 2002, Mateycak and his codefendant, Anthony Gwynn, purchased lithium batteries and Ephedrine tablets. For reasons not made clear by the record, the police were alerted to the purchases and, because these items are commonly used in the manufacture of methamphetamine, undertook an investigation. In connection with that investigation, the police searched a residence in Paducah and found six cans of starter fluid, several torches, coffee filters, three packages of Sudafed, several lithium batteries, measuring spoons, a piece of tinfoil with methamphetamine residue, and a clear baggie with methamphetamine residue. After the search, Mateycak admitted that he and Gwynn intended to make methamphetamine.

In September 2002, Mateycak was indicted for, among other things, manufacturing methamphetamine and first-degree possession of a controlled substance (methamphetamine). In May 2003, Mateycak pleaded guilty to several charges, foremost of which was the amended charge of conspiracy to manufacture methamphetamine. After the trial court engaged him in the requisite Boykin³ colloquy, the court sentenced him to ten years' imprisonment.

³ See Boykin v. Alabama, 395 U.S. 238 (1969).

In May 2004, Mateycak filed a motion to vacate his conviction for conspiracy to manufacture methamphetamine under CR 60.02, arguing that he was entitled to relief under Kotila v. Commonwealth. In June 2004, the circuit court entered an order denying his motion for post-conviction relief. This appeal followed.

Before we address the merits of Mateycak's motion, we first must discuss the Commonwealth's argument that Mateycak's motion for post-conviction relief is procedurally barred because it was brought under CR 60.02 rather than Kentucky Rules of Criminal Procedure (RCr) 11.42. While we agree with the Commonwealth that Mateycak should have brought his motion under RCr 11.42, we do not believe Mateycak's procedural error is fatal to his motion. First, the trial court deemed the motion as having been brought as a RCr 11.42 motion, as will we. Second, the Commonwealth has not shown that it will suffer any prejudice by virtue of our election to treat Mateycak's motion as having been brought under RCr 11.42. Thus, we decline to dismiss this appeal on procedural grounds.

Having disposed of the Commonwealth's procedural argument, we now turn to the merits of Mateycak's motion. We accept Mateycak's contention that he did not possess all of the necessary chemicals or equipment to manufacture methamphetamine. But his lack of all of the ingredients to manufacture

methamphetamine does not entitle him to relief from his conviction for conspiracy to manufacture methamphetamine.

In essence, Mateycak contends that the evidence was insufficient to convict him of the offense. But Mateycak's argument must fail for several reasons. First, his motion 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."⁴

Second, Mateycak's reliance upon Fiore v. White⁵ is misplaced. Fiore stands for the proposition that when a later interpretation of a statute makes it clear that the defendant's conduct did not violate the statute, the defendant's conviction violates due process. But Fiore is readily distinguishable because, unlike Mateycak's case, Fiore involved a conviction following a jury trial, not a guilty plea.⁶

Finally, we note that Kotila is readily factually distinguishable from this case because Kotila involved manufacturing methamphetamine, not conspiracy to manufacture methamphetamine. Under the law of conspiracy, a person may be guilty of conspiracy to possess a controlled substance without

⁴ Johnson v. Commonwealth, 103 S.W.3d 687, 696 (Ky. 2003).

⁵ 531 U.S. 225 (2001).

⁶ Likewise, in Kotila, the defendant maintained his innocence throughout and was tried and convicted by a jury. By virtue of his guilty plea, Mateycak made no such claim of innocence.

having actually possessed the controlled substance himself.⁷ Likewise, a person could be guilty of conspiracy to manufacture methamphetamine without actually possessing methamphetamine or any of its precursor ingredients. Thus, Kotila's extended discussion about the necessity of possessing all of the precursor ingredients of methamphetamine in order to be guilty of manufacturing methamphetamine has no relevance to Mateycak's conspiracy conviction.

Finally, we decline to address any of Mateycak's other arguments because he did not raise them before the trial court.⁸

For the foregoing reasons, we find that Mateycak has not presented extraordinary circumstances meriting post-conviction relief, meaning that the trial court did not abuse its discretion in denying his motion.⁹ Thus, the order of the McCracken Circuit Court is affirmed.

VANMETER, JUDGE, CONCURS.

⁷ See, e.g., United States v. Diaz, 190 F.3d 1247, 1253 (11th Cir. 1999) (holding that "[i]n a conspiracy, however, neither actual possession nor actual distribution [of the controlled substance] is a necessary element of the crime. Only an agreement is necessary. . . . If there is an agreement that any member of the conspiracy will possess the cocaine that is intended to be distributed, then the defendant as a member of that conspiracy is guilty of a *conspiracy* to possess with the intent to distribute. At the same time, he is a member of a conspiracy to distribute cocaine.").

⁸ Bowling v. Commonwealth, 80 S.W.3d 405, 419 (Ky. 2002).

⁹ See Commonwealth v. Bustamonte, 140 S.W.3d 581, 583 (Ky.App. 2004).

MILLER, SENIOR JUDGE, DISSENTS AND FILES SEPARATE
OPINION.

MILLER, SENIOR JUDGE, DISSENTING. Mateycak entered a plea to conspiracy in order to avoid conviction for manufacturing methamphetamine under KRS 218A.1432. That statute was later interpreted in Kotila v. Commonwealth, 114 S.W.3d 226 (Ky. 2003), so as not to include the conduct for which Mateycak was charged. In Fiore v. White, 531 U.S. 225, 121 S.Ct. 712, 148 L.Ed.2d 629 (2001), the United States Supreme Court held that when a subsequent interpretation of a statute makes it clear that the defendant's conduct did not violate the statute, the defendant's conviction violates due process. To me, it seems unreasonable to conclude that Mateycak does not stand convicted as a direct result of the manufacturing charge. Clearly, he comes within the purview of the holding in Fiore.

The irony of this case is that if Mateycak had insisted on trial and been convicted, then, in that event, I assume the majority would have no reluctance to bring him within the purview of Fiore. Our system encourages pleas to lesser offenses. Mateycak acted accordingly. He now finds himself outside the protections of Kotila and Fiore. Certainly, Fiore should not be construed so narrowly.

Moreover, I do not believe that the holding in Fiore intended to draw a distinction between a conviction upon trial

and a conviction upon a plea of guilty. In any event, denial of due process addresses loss of liberty, however same may occur.

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