

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000238-MR
AND
NO. 2005-CA-000696-MR

ANTHONY WENTWORTH

APPELLANT

v. APPEAL FROM HENRY CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NO. 98-CR-00017
AND NO. 98-CR-00045

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, KNOPF AND McANULTY, JUDGES.

GUIDUGLI, JUDGE: Anthony Wayne Wentworth appeals from two separate orders of the Henry Circuit Court in this consolidated appeal. He maintains that the trial court improperly denied his motion to proceed in forma pauperis, and erred in denying his motion for post-conviction relief from judgment. For the reasons stated below, we affirm both orders.

On April 24, 1998, the Henry County grand jury indicted Wentworth on one count each of first-degree rape, second-degree sodomy, tampering with physical evidence, theft of services and second-degree persistent felony offender. The charges arose from an alleged sexual assault on a 13-year-old girl. This action was styled 98-CR-017.

While out on bond, Wentworth was charged under another indictment with having committed additional crimes against the same victim. This proceeding, styled 98-CR-045, charged that Wentworth committed one count each of first-degree rape, first-degree burglary, kidnapping, tampering with physical evidence, and retaliation against a witness. The kidnapping charge was later dismissed.

Wentworth accepted a plea offer from the Commonwealth, and on September 13, 2000, entered an Alford¹ plea. The plea agreement, as imposed by the circuit court, apparently included Wentworth's release on bond pending final sentencing.²

On July 27, 2001, Wentworth was reported as noncompliant on a condition of his bond, to wit, his failure to report a change in job status. Thereafter, the Commonwealth moved to revoke Wentworth's bond. After hearings on the matter were conducted, the circuit court entered an order on August 24,

¹ North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

² Wentworth was offered alternative sentencing, which apparently did not include incarceration.

2001, revoking the bond and setting a date for final sentencing. Wentworth was later sentenced to a term of 20 years in prison under 98-CR-017 and 20 years under 98-CR-045. On direct appeal, the Supreme Court of Kentucky affirmed his convictions. A subsequent RCr 11.42 motion also was denied, as was the appeal from the circuit court's order denying the motion.

On December 22, 2004, Wentworth filed a "Motion to Void Judgment or Amend Movant's Alternate Sentence or Reinstate the Unsecured Bond Pursuant to CR 60.02(e)." In response, the circuit court directed Wentworth to pay a filing fee in the amount of \$100. Upon finding that Wentworth had sufficient funds in his prisoner's institutional account, the court denied Wentworth's motion to proceed in forma pauperis.

On January 21, 2005, Wentworth filed a pro se motion styled "Motion for Specific Performance of the Plea Agreement, or an Opportunity to Withdraw His Guilty Plea Pursuant to CR 60.02(e)(f)." On February 15, 2005, the circuit court entered an order denying both the December 22, 2004, and January 21, 2005, motions. The court opined that the motions were "both frivolous and totally lacking in merit," and went on to find that they were tendered in bad faith because they followed a direct appeal, a motion for RCr 11.42 relief, and a litany of other post-conviction motions. The court imposed a sanction in

the amount of \$500 against Wentworth for the frivolous motions, and this appeal followed.

Wentworth now argues that the circuit court committed reversible error in denying his motion to proceed in forma pauperis. He maintains that he is a pauper, and since there is no evidence in the record to the contrary he is entitled as a matter of law to proceed in forma pauperis. He contends that the trial court erred in failing to so rule, and he seeks an order reversing the circuit court's order on this issue.

Wentworth's argument is not persuasive. Contrary to his assertion that the record contains no evidence controverting his claim of destitution, evidence exists showing that his prison account contained in excess of \$1,500 between June and November 2004. While we will not examine this issue de novo, it is clear that some evidence exists in the record upon which the circuit court could reasonably base its conclusion that Wentworth was not a pauper. The burden rests with Wentworth to prove that the order on appeal was erroneous.³ He has not met that burden, and accordingly we find no error on this issue.

Wentworth also argues that the circuit court erred in denying his motions for CR 60.02 relief.⁴ He contends that the court improperly accepted the Commonwealth's reasoning that

³ City of Louisville v. Allen, 385 S.W.2d 179 (Ky. 1964).

⁴ Wentworth appears to argue that he is entitled to relief under both the December 22, 2004, and January 21, 2005, motions.

Wentworth's arguments either were raised or should have been raised on direct appeal or via RCr 11.42. He maintains that the motions should have been held in abeyance pending the resolution of a pending RCr 11.42 motion, and that he was entitled to an evidentiary hearing on the issue. In sum, he seeks an order directing the trial court to allow him to withdraw his Alford plea and to proceed to trial on his original plea of not guilty.

We find no error on this issue. First, it is abundantly clear that issues relating to the propriety or sufficiency of the Alford plea were addressed, or should have been addressed, either when Wentworth prosecuted a direct appeal to the Supreme Court of Kentucky, or via his subsequent RCr 11.42 motion or other motions.⁵ This fact, taken alone, forms a sufficient basis for affirming the circuit court's order on this issue. Wentworth's CR 60.02 motions would provide relief, if at all, only for "extraordinary" circumstances not justiciable on direct appeal or via RCr 11.42. He has neither alleged nor proven the existence of such circumstances. The corpus of his claim on this issue is that the circuit court improperly accepted the Commonwealth's argument that Wentworth is not entitled to relief. This allegation does not constitute a claim of entitlement to relief for extraordinary circumstances, and the circuit court did not err in so ruling.

⁵ Shepherd v. Commonwealth, 477 S.W.2d 798 (Ky. 1972).

For the foregoing reasons, we affirm the orders of the Henry Circuit Court denying Wentworth's claim for pauper status and claim for CR 60.02 relief from judgment.

ALL CONCUR.

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