

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000979-MR

MICHAEL THOMAS REED

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 02-CR-01222

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON,¹ SENIOR JUDGE.

HENRY, JUDGE: Michael Reed appeals the Fayette Circuit Court's denial of his CR² 60.02 motion. He argues that the sentence imposed upon him exceeded the statutory maximum. We disagree and affirm.

On October 19, 2002, Reed forced his way in to the apartment of a student intern at the Catholic Newman Center on the University of Kentucky campus. Reed proceeded to slash at

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.

² Kentucky Rules of Civil Procedure.

the female intern, using a knife that he had stolen from the Center's kitchen. When the victim continued to resist, Reed grabbed a baseball bat and began to beat her over the head. He stole her wallet and fled the apartment.

The victim described her assailant to the police, and they soon had Reed in custody. Not only was the victim's wallet seized from Reed's back pants pocket, but he also made several incriminating statements to the police.

An indictment was returned versus Reed on December 5, 2002. On August 29, 2003, Reed entered conditional pleas of guilty (RCr³ 8.09) to first-degree burglary, first-degree robbery, and first-degree assault. The latter charge was enhanced by a further plea of guilty to first degree persistent felony offender. The Commonwealth recommended sentences of ten years, ten years, and twenty years, respectively, for the felonies, with the twenty year sentence being enhanced to twenty five years as a result of the recidivist conviction. The trial court sentenced Reed accordingly, with all sentences to run consecutively for a total of forty-five years' imprisonment. Upon the Commonwealth's motion, a remaining charge of possession of drug paraphernalia was dismissed, as were two other pending indictments (viz., Nos. 02-CR-908 and -1223).

³ Kentucky Rules of Criminal Procedure.

On direct appeal, the Kentucky Supreme Court considered Reed's sole issue questioning the propriety of his arrest and the fruits of his stop and frisk. Reed's conviction was affirmed by that Court on October 21, 2004.

Reed then sought collateral relief pursuant to CR 60.02, which the Fayette Circuit Court summarily denied. On appeal, besides challenging the length of his sentence, Reed also contends that the Commonwealth reneged on a promise to recommend a twenty year sentence. Reed additionally insists that trial counsel misled him into pleading guilty.

The record belies Reed's every allegation. The Commonwealth's offer on a plea agreement was reduced to writing and signed by Reed and his attorney. The plea as entered only differed from the original offer in that the enhanced assault sentence was lowered from thirty to twenty-five years. The videotape of the plea proceedings substantiates the Commonwealth's position that appellant was fully apprised of the accurate range of sentences and the plea offer.

The enhancement (the correctness of which Reed does not dispute) from a Class B felony to a Class A felony permits sentencing in the range of twenty to fifty years. KRS 532.080(6)(a). Reed's sentence of forty-five years falls within that range.

"CR 60.02 is not intended merely as an additional opportunity to raise Boykin [v. Alabama, 395 U.S. 238 (1969)] defenses. It is for relief that is not available by direct appeal and not available under RCr 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief." Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983). Reed has failed to demonstrate such.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

APPELLANT *PRO SE*:

Michael Thomas Reed
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BRIEF FOR APPELLEE:

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