

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001823-MR

CRAIG ALLEN CAGLE

APPELLANT

v. APPEAL FROM CARLISLE CIRCUIT COURT
HONORABLE WILLIAM LEWIS SHADOAN, SPECIAL JUDGE
ACTION NO. 86-CR-00004

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: TAYLOR AND THOMPSON, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Craig Allen Cagle appeals from an order of the Carlisle Circuit Court denying his Kentucky Rule of Criminal Procedure (RCr) 11.42 motion to vacate the judgment convicting and sentencing him to prison for various crimes. The court's order was entered after the case had been remanded from this court

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

for an evidentiary hearing. *See Cagle v. Commonwealth*, 2005-CA-000835-MR (Ky.App. Not To Be Published, Rendered May 12, 2006.) We affirm.

On September 12, 1985, Cagle was indicted by a grand jury in Fulton County for two counts of murder, two counts of first-degree burglary, three counts of second-degree assault, kidnapping, and first-degree sexual abuse. The first-degree sexual abuse charge was subsequently dismissed.

On March 20, 1986, Cagle, who was represented by an attorney, Hon. Tod Megibow, entered guilty pleas to the remaining offenses. He was sentenced to two terms of life imprisonment without the possibility of parole for 25 years on the murder convictions, 20 years on each of two counts of first-degree burglary, ten years on each of three counts of second-degree assault, and 20 years on kidnapping. The sentences were ordered to run consecutively for a total of two life sentences plus 90 years.

On September 10, 1997, Cagle filed a *pro se* RCr 11.42 motion to vacate the judgment. No activity of record occurred over the next seven years. A legal assistant at the correctional facility where Cagle was housed filed a letter with the court on September 16, 2004, inquiring about the status of the motion. On March 3, 2005, the court entered an order denying the motion without an evidentiary hearing and denying the motion for appointment of counsel.

Cagle appealed the court's order to this court. In a 2-1 opinion rendered on May 12, 2006, this court remanded the case to the trial court for an evidentiary hearing. The trial court conducted an evidentiary hearing and again denied the motion. This appeal by Cagle followed.

The issue involves a psychiatric evaluation report that was prepared and submitted to the trial court by Dr. Thomas M. Cassidy, a psychiatrist at the Kentucky Correctional Psychiatric Center (KCPC), before Cagle entered guilty pleas to the offenses. Dr. Cassidy stated in his report that Cagle was not capable of recognizing the consequences of his actions at the time he committed the crimes. The report reads, in part, as follows:

The patient's inability to recognize the severe lack of judgment related to his decisions at that time certainly indicates a rather severe degree of emotional deterioration and stress. It also certainly indicates transient series of psychotic symptoms which, at the time of the alleged crimes, made it impossible for the patient to perceive or to recognize the consequences of his actions.

This court noted in its earlier opinion that the report was not entered into the record until Cagle filed his RCr 11.42 motion and attached it thereto.

Cagle asserts that he would not have admitted his guilt if he had known of Dr. Cassidy's evaluation report. Thus, he contends that his guilty pleas were not knowingly, voluntarily, and intelligently entered. Additionally, he claims that his pleas were not voluntary because of ineffective assistance of counsel. When this court considered Cagle's appeal the first time, we determined that there was nothing in the record to refute Cagle's allegation that he was unaware of the evaluation report when he entered his guilty pleas. This court also stated that if Cagle's trial counsel failed to advise him of the psychiatric evaluation report, then such failure might be argued as rendering ineffective assistance of counsel that so compromised the process as to render his plea involuntary. Thus, this court remanded the case to the trial court for an evidentiary hearing to address that issue.

After conducting an evidentiary hearing at which both Cagle and his trial counsel testified, the trial court again denied Cagle's RCr 11.42 motion. First, the court noted that the evaluation report was, contrary to this court's assertion in its first opinion, in the record prior to Cagle pleading guilty to the offenses. The court explained that the portion of the record containing the report was never transmitted to this court and that this court was thus never advised of its presence in the record.

Second, the court found that Cagle was aware of the report and its contents prior to entering his guilty pleas. Cagle's trial counsel testified at the evidentiary hearing that he recalled receiving the report and reviewing it "item by item" with Cagle prior to his pleading guilty. Cagle's counsel stated that he recalled this matter specifically although it occurred approximately 20 years ago. Counsel stated that his memory was still intact concerning this case because of the nature of the crimes involved and the fact that Cagle was facing the death penalty. Counsel stated that he had "no doubt" that he had discussed the report with Cagle and that they had discussed whether Cagle should plead guilty or go to trial relying on the report as a defense. The court found that counsel's testimony was "especially compelling and believable" and that Cagle's testimony "was self-serving at best". Thus, the court again denied the motion.

Cagle raises four arguments in his brief. Before addressing these, we note that this court in its opinion in the first appeal held that all issues raised by Cagle, with the exception of whether counsel rendered ineffective assistance by not advising Cagle of the contents of the evaluation report, were "either without merit or should have been raised on direct appeal." Thus, our review in this appeal is properly limited to a consideration of that issue.

First, Cagle argues that the trial court kept the evaluation report hidden from both the defense and the Commonwealth until its existence was discovered by Cagle years later. Cagle asserts that the report was marked confidential and sealed, that it was not made a part of the record, and that he was prejudiced by not being given the opportunity to consider it before pleading guilty to the charges.

As we have noted, in this court's opinion in the first appeal, we stated that “[t]he evaluation was not entered into the record until appellant filed his RCr 11.42 motion and appended the evaluation as an attachment.” On remand, the trial court stated that this court was “in error” and that the report was “filed of record” but had not been transported by the clerk to this court as a part of the record. Our examination of the docket sheets from the Fulton Circuit Court and the Carlisle Circuit Court continues to reveal, as it did in the first appeal, that the report was not made a part of the record until Cagle included it as part of his RCr 11.42 motion. That would explain why the report was not sent to this court for the first appeal.²

Whether the report had been made a part of the record or not is not the question. The real issue is whether Cagle and his trial counsel had an opportunity to see the report and review it before deciding whether Cagle should plead to the charges or should go to trial. Cagle's trial counsel stated that they did, and the trial court accepted that testimony as credible and rejected Cagle's testimony as “self-serving”. Furthermore, this finding is supported by a letter from the judge to the clerk that the letter should be

² It has not been explained to us why the trial court maintains that this court was in error in the portion of the first opinion, wherein it was stated that the evaluation report was not a part of the record when Cagle entered his guilty pleas, when the record clearly supports our assertion. Perhaps, the report was in the file and was marked confidential and sealed but had not been made a part of the formal record.

sealed and marked “confidential” but should be made a part of the record and a letter to the attorneys noting that a copy of the report was enclosed therein. In short, we find no error in this regard.

Cagle's second argument is that the trial court erred by failing to conduct an evidentiary hearing pursuant to KRS 504.100(3) and RCr 8.06. Cagle argues that because the report indicated he may not have been criminally responsible for his acts in committing the crimes, the court was required to conduct a hearing pursuant to the aforementioned statute and rule. He maintains that had the court conducted such a hearing, “these unanswered questions could have been addressed by Dr. Cassidy.”

We reject Cagle's argument in this regard for two reasons. First, it is beyond the scope of the specific issue that had been remanded for consideration. This court had rejected all arguments, with the exception of the ineffective assistance of counsel argument, summarily in the first opinion. Second, KRS 504.100(3) and RCr 8.06 relate to competency to stand trial and not criminal responsibility.³ Any hearing concerning the report conducted by the court would not have addressed Cagle's criminal responsibility but would have only addressed his competency to stand trial, a matter that Cagle does not contest.

Third, Cagle argues that the court erred “by interpolating the legal standard of 'competency to stand trial' over that of 'criminal responsibility'” which, he claims, denies his right to a fair trial. Although his argument in this regard is somewhat difficult to follow, Cagle apparently contends that the hearing on remand appeared to stress his competency to stand trial rather than his criminal responsibility. He states that “[i]f the

³ The report stated that Cagle was competent to stand trial.

whole evidence, as presented by the Commonwealth through Dr. Cassidy's psychiatric evaluation, does not exclude proof beyond a reasonable doubt the hypothesis of insanity, of which some proof is adduced, Cagle was entitled to an acquittal of the specific offenses charged.” In short, Cagle appears to argue that because the conclusions in Dr. Cassidy's report had not been disproved, then the charges should have been dismissed.

Cagle overlooks the fact that he entered guilty pleas and that a guilty plea waives all defenses except that the indictment charges an offense.. *See Centers v. Commonwealth*, 799 S.W.2d 51,55 (Ky.App. 1990). Therefore, because Cagle entered guilty pleas to the crimes, he waived all defenses, including lack of criminal responsibility, and the Commonwealth was not required to prove his guilt.

Finally, Cagle argues that the trial court erred in denying his claim for relief due to the ineffective assistance of his trial counsel because “counsel coerced a guilty plea instead of presenting an affirmative KRS 504.020 defense to the charges.” Cagle cites *Ivey v. Commonwealth*, 655 S.W.2d 506, 512 (Ky.App. 1983), wherein this court held that “it is ineffective assistance of counsel to fail, without a reasonable basis, to present a defense that would compel a dismissal of the charges.”

Because Cagle chose to plead guilty rather than go to trial, his counsel never had the opportunity to raise insanity or mental illness as a defense. As we have noted, a guilty plea waives all defenses except that the indictment fails to charge an offense. *Centers, supra*.

Cagle presumably argues that his counsel coerced him into pleading guilty when he had a valid defense. Cagle was facing the death penalty for horrendous crimes. Even if the jury had accepted his defense to a degree, it may not have resulted in complete

acquittal but a verdict of guilty but mentally ill. We will not second-guess any advice Cagle's counsel may have given Cagle to plead guilty, especially considering that it was Cagle himself who made that decision.

The order of the Carlisle Circuit Court denying Cagle's RCr 11.42 motion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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