

RENDERED: JULY 6, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001916-MR

DEREK WORKS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 02-CR-01181

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** * ** * **

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM¹, SENIOR JUDGE
ROSENBLUM, SENIOR JUDGE: Derek Works entered a plea of guilty but mentally ill to charges of first degree robbery, second degree assault, three counts of second degree criminal mischief, operating a motor vehicle on a suspended license and to being a persistent felony offender in the first degree. He was sentenced to serve a total of twenty-three years. He filed a motion pursuant to RCr 11.42 seeking to vacate the judgment and sentence. The trial court overruled that motion and this Court affirmed the decision on

¹ Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

our unpublished case number 2005-CA-000947-MR rendered June 23, 2006. Works then filed a motion for post-conviction relief pursuant to RCr 10.26 alleging palpable error. The trial court denied that relief finding the motion was “tantamount to a motion for a new trial.” The trial court noted that Works did not appeal from his original guilty plea and sentencing nor did he raise the alleged error as part of his RCr 11.42 motion or the subsequent appeal of that decision.

Counsel was appointed to represent Works in the current appeal but ultimately, the Department of Public Advocacy filed a motion requesting permission to withdraw. That motion was granted when the Department alleged that after a review of the appeal, it was not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense. KRS 31.110(2)(c).

Works has proceeded in this appeal *pro se*. He has waived or attempted to bypass the entire body of procedural requirements in an effort that appears to express his desire to set aside his plea and proceed to trial. The first step required of a defendant aggrieved of a judgment in a criminal case is a direct appeal. *Gross v. Commonwealth*, 648 S.W.2d 853 (Ky. 1983). That appeal must state every ground of error that he or his attorney is aware of when the appeal is taken. *Id.* A guilty plea, made knowingly and voluntarily, extinguishes every issue available on direct appeal except if the indictment failed to charge an offense. *Corbett v. Commonwealth*, 717 S.W.2d 831 (Ky. 1986). Works waived a direct appeal when he entered a plea of guilty but mentally ill.

His next required avenue of relief would be pursuant to RCr 11.42. Final disposition of that motion, or waiver of the opportunity to make it, shall conclude all issues that reasonably could have been presented in that proceeding. *Gross v. Commonwealth, supra*. Works failed to present the issues he now raises during the RCr 11.42 proceeding.

Even though Works has waived or ignored the procedural requirements he now seeks review of his claim pursuant to RCr 10.26 arguing that the trial court committed palpable error during sentencing. He suggests that the holding in *Moody v. Commonwealth*, 698 S.W.2d 530 (Ky. App. 1985) required a psychologist or psychiatrist be present in court prior to imposition of the sentence. In addition Works asserts the trial Court erred by not making findings of fact regarding his mental condition prior to accepting the plea. We have reviewed these claims and upon consideration of the whole case, we are not convinced that there is a substantial possibility that the result would have been any different. *See Jackson v. Commonwealth*, 717 S.W.2d 511 (Ky. App. 1986). We do not find manifest injustice or palpable error sufficient to grant relief. *Schoenbachler v. Commonwealth*, 95 S.W.3d 830 (Ky. 2003).

The judgment of the Fayette Circuit Court denying the relief requested pursuant to RCr 10.26 is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Derek Works, *Pro Se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

Clint E. Watson
Assistant Attorney General
Frankfort, Kentucky