

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000924-MR

JAMES J. WILLMAN, Jr.

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NOS. 95-CR-00155 AND 95-CR-00155-001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: CAPERTON, LAMBERT, THOMPSON, JUDGES.

CAPERTON, JUDGE: James J. Willman, Jr. (Willman), appeals an order of the Campbell Circuit Court which denied his motion for a new trial under RCr 10.26. For the following reasons, we affirm Judge Julie Reinhardt Ward's denial of the motion for a new trial.

Willman was convicted of wanton murder and first-degree robbery late in the year 1995 and was subsequently sentenced early in the year 1996 to a life term of imprisonment without the possibility of parole for twenty-five (25) years for

the murder conviction and a ten (10) year term for the robbery conviction to run concurrently. Willman filed a direct appeal to the Kentucky Supreme Court and was represented by appellate counsel. The court affirmed his convictions in February 1997. Prior to the direct appeal being rendered, Willman filed a *pro se* motion under CR 60.02 and 11.42¹. The circuit court overruled his request for relief in March 1997 and Willman failed to appeal the order. On March 29, 2005, Willman filed a petition for writ of *venire facias de novo* which was denied by the circuit court on April 5, 2005. Willman then filed his *pro se* motion for a new trial pursuant to RCr 10.26 on March 5, 2007. The circuit court overruled this motion on April 12, 2007, and Willman appeals from this order.

On appeal, Willman argues that he is entitled to a new trial due to evidence in the record that amounts to substantial error under RCr 10.26. Willman claims to have been denied a mitigating evidentiary hearing, a fair appeal process, adequate and effective assistance of counsel which violated his equal protection rights, and a fair trial due to prosecutorial improprieties.

In contesting his sentencing, Willman argues that the prosecutor misstated the jury's options as to sentencing, that the prosecutor lied about him, and that the jury's findings were not unanimous. Willman argues that his attorney did not bring

¹ Willman did not style his motion as an RCr 11.42 but the trial court correctly identified the issues raised by the motion as RCr 11.42 issues and treated said motion as such.

to light his mental problems resulting from his prior head injury. Willman also argues that his attorney failed to call witnesses.

Willman has already litigated these very same issues in his direct appeal and in his prior post-conviction relief motions. "The structure provided in Kentucky for attacking the final judgment of a trial court in a criminal case is not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals, in RCr 11.42, and thereafter in CR 60.02." *Gross v. Com.*, 648 S.W.2d 853 (Ky. 1983). RCr 11.42 provides that "the motion shall state all grounds for holding the sentence invalid of which the movant has knowledge. Final disposition of the motion shall conclude all issues that could reasonably have been presented in the same proceeding." In addition, res judicata and collateral estoppel prevent Willman from relitigating issues raised in his direct appeal and prior post-conviction relief motions. *Barnett v. Com.*, 348 S.W.2d 834 (Ky. 1961).

Willman requests this Court to grant appellate relief under RCr 10.26. RCr 10.26 states:

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

Id. In *Partin v. Com.*, 918 S.W.2d 219 (Ky. 1996) the court explains that palpable error is one that "upon consideration of the whole case, the reviewing court must conclude that a substantial possibility exists that the result would have been different in order to grant relief." *Id.* at 224. Willman claims that the evidence in the record supports his numerous arguments and requires this Court to grant him relief. Even if we were to ignore the bar imposed by *res judicata* as previously discussed, the record does not support a finding of palpable error resulting in manifest injustice. The record contradicts Willman's arguments and Willman has failed to bring to light any newly discovered evidence which would have resulted in a different result. As such, Willman's request for appellate relief must be denied.

For the aforementioned reasons, we affirm the order of Hon. Julie Reinhardt Ward, Judge of the Campbell Circuit Court, denying a motion for new trial pursuant to RCr 10.26.

ALL CONCUR.

BRIEF FOR APPELLANT:

James J. Willman, Jr., *Pro Se*
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Clint E. Watson
Office of the Attorney General
Frankfort, Kentucky