

Commonwealth Of Kentucky

Court of Appeals

NO. 2007-CA-001375-MR

MICHAEL THOMAS REED

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
INDICTMENT NO. 02-CR-01222

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: CAPERTON, LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, JUDGE: Michael Reed appeals the Fayette Circuit Court's denial of his CR 11.42 motion. After careful review, we affirm.

On October 19, 2002, Reed forced his way into the apartment of a student intern at the Catholic Newman Center on the University of Kentucky campus. Reed proceeded to slash at the female intern, using a knife that he had stolen from the center's kitchen. When the victim continued to resist, Reed

grabbed a novelty baseball bat and began to beat her over the head. He subsequently stole her wallet and fled the apartment.

Reed was indicted and entered conditional guilty pleas 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 PFO conviction. The trial court sentenced Reed with all sentences to run consecutively for a total of forty-five years' imprisonment.

On direct appeal, the Kentucky Supreme Court affirmed Reed's convictions. Reed then sought collateral relief pursuant to CR 60.02, which the Fayette Circuit Court summarily denied. On appeal, Reed challenged the length of his sentence, and alleged that his trial counsel's advice was ineffective regarding his guilty plea. Reed appealed his 60.02 motion to this Court, and we affirmed the denial in September 2006. *Reed v. Commonwealth*, 2006 WL 2519468 (Ky.App. 2006).

Reed simultaneously brought a post-conviction appeal to the Fayette Circuit Court, this time under RCr 11.42, again alleging that his trial counsel was ineffective during the guilty plea proceedings and raising double jeopardy issues. The court denied his motion, and this appeal followed.

Reed's double jeopardy argument is barred on procedural grounds. In order to properly preserve an issue via a conditional guilty plea, RCr 8.09 requires in pertinent part that "[w]ith approval of the court a defendant may enter a conditional plea of guilty, reserving *in writing* the right, on appeal from the judgment, to review of the adverse determination of any *specified* trial or pretrial motion." (emphasis added). The record of the conditional guilty plea indicates that the double jeopardy argument was not reserved in writing; therefore, we decline to review.

We additionally decline to address the ineffective assistance of counsel arguments as they were previously addressed by this court on Reed's initial appeal of his 60.02 motion and are thus barred by the doctrine of *res judicata*.

Accordingly, we dismiss this appeal.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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