

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003188-MR

WILLIAM G. TURPIN

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE FARMER HELTON, SPECIAL JUDGE
ACTION NO. 82-CR-150

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KNOX, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: William G. Turpin brings this *pro se* appeal from a November 19, 1997 order of the Harlan Circuit Court. We affirm.

In August 1985, appellant entered a plea of guilty to third-degree burglary (Kentucky Revised Statute (KRS) 511.040), and criminal mischief in the first degree (KRS 512.020) in exchange for a 2-1/2 year sentence of imprisonment. On September 23, 1996, appellant filed a Rules of Criminal Procedure (RCr) 11.42 motion to set aside judgment and a motion for appointment of counsel. On November 19, 1997, the Harlan Circuit Court overruled appellant's RCr 11.42 motion without an evidentiary

hearing and overruled his motion for appointment of counsel. This appeal followed.

Appellant contends that his guilty plea was obtained in violation of Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). Specifically, appellant asserts that he was not informed at the time of his guilty plea of his right to confront his accusers. In the "Judgment and Sentence on Plea of Guilty," it specifically recites that appellant agreed and understood that he was knowingly and voluntarily waiving his right to "confront and cross examine witnesses." As such, we are of the opinion that the record clearly refutes appellant's contention that he was not so advised.

Appellant also maintains that his guilty plea was the result of counsel's ineffectiveness. Specifically, he contends that his guilty plea was "not knowingly." Appellant asserts that trial counsel provided misinformation concerning what elements would be necessary for the Commonwealth to obtain a conviction upon the burglary charge. We perceive no merit in this contention. Appellant has failed to offer specific proof thereof, and the record itself contradicts same. In the "Judgment and Sentence on Plea of Guilty," appellant averred that he understood "the nature of the charges against him" As such, we are of the opinion that appellant's RCr 11.42 motion is refuted upon the face of the record, thus entitling him neither to an evidentiary hearing nor appointment of counsel. See Sparks v. Commonwealth, Ky. App., 721 S.W.2d 726 (1986).

For the foregoing reasons, the order of the circuit court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William G. Turpin, Pro Se
Indiana State Prison
Michigan City, IN

BRIEF FOR APPELLEE:

A. B. Chandler III
Attorney General
and
Joseph R. Johnson
Assistant Attorney General
Frankfort, KY