

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000246-MR

BOBBY JOE JEWELL

APPELLANT

v. APPEAL FROM LARUE CIRCUIT COURT
HONORABLE LARRY RAIKES, JUDGE
ACTION NO. 77-CR-00036 & 78-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, HUDDLESTON, and MILLER, Judges.

COMBS, JUDGE: Bobby Joe Jewell, *pro se*, appeals from an order of the Larue Circuit Court denying his motion under Kentucky Rules of Civil Procedure (CR) 60.03 to amend or vacate his sentence. We affirm.

In 1978, Jewell pled guilty to one count of capital murder and one count of first-degree burglary. He was sentenced to serve twenty-one years in prison for the murder and twenty years on the burglary charge with the sentences to run consecutively. On December 6, 2000, Jewell filed a motion for a reduction in his sentence. He argued that because the plea agreement had never been reduced to writing, it was "null and void." Jewell did not allege any harm resulting from the failure to reduce the plea agreement to writing, but he complained that the prosecutor discriminated against him as evidenced by the fact

that Jewell's three co-defendants successfully bargained for ten-year sentences. The trial court denied Jewell's request for relief because: (1) it was untimely and (2) it should have been presented in one of Jewell's three previous motions filed pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42.

Jewell presents new arguments in this appeal. He now alleges that it was his understanding at the time he entered his plea that the Commonwealth would recommend a sentence of ten years rather than twenty to serve on the burglary charge; he also contends that he had not been competent to enter a plea intelligently because of his low level of intelligence. We find no merit in either contention.

The issue of whether Jewell's plea was voluntarily and intelligently made has already been addressed by this Court in one of Jewell's previous appeals. This Court stated:

The transcript of his guilty plea contained in the record readily refutes Jewell's contentions [regarding the voluntary and intelligent nature of the plea]. It is obvious from a reading of the transcript that the [trial] court complied with the requirement of Boykin v. Alabama, 395 U.S. 238, 244, 89 S.Ct. 1709, 23 L.Ed.2d 274, 280 (1969). It is also apparent that Jewell understood the nature of those proceedings.¹

Even if Jewell had evidence that his level of intelligence prevented him from understanding the consequences of his plea, he is precluded by the law of the case doctrine – or by *res judicata*

¹Jewell v. Commonwealth, No. 96-CA-001269-MR, opinion rendered 6-6-97 and designated "not to be published." Discretionary review was denied by the Kentucky Supreme Court on November 12, 1997.

– from litigating that issue anew. Brown v. Commonwealth, Ky., 788 S.W.2d 500 (1990).

Further, the trial court correctly determined that any issue with respect to the failure to reduce the plea agreement to writing was time-barred. Whether written or oral, a plea agreement is enforceable. See, Workman v. Commonwealth, Ky., 580 S.W.2d 206 (1979); Commonwealth v. Reyes, Ky., 764 S.W.2d 62 (1989). However, the time to raise that issue is at sentencing. Twenty-two years have elapsed.

CR 60.03 provides:

Rule 60.02 shall not limit the power of any court to entertain an independent action to relieve a person from a judgment, order or proceeding on appropriate equitable grounds. Relief shall not be granted in an independent action if the ground of relief sought has been denied in a proceeding by motion under Rule 60.02, or would be barred because not brought in time under the provisions of that rule.

CR 60.03 must be construed in conjunction with CR 60.02 with respect to limitation of time. CR 60.02 requires that a motion to be relieved of a final judgment “shall be made within a reasonable time.” A delay of twenty-two years after his sentencing in seeking relief cannot qualify as coming “within a reasonable time.” We conclude that Jewell is not entitled to relief under CR 60.03.

The judgment of the Larue Circuit Court is affirmed.

ALL CONCUR.

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