

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001721-MR

DANNY BUSTLE

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE ROBERT E. GILLUM, CIRCUIT JUDGE  
INDICTMENT NO. 03-CR-00014

COMMONWEALTH OF KENTUCKY

APPELLEE

AND

No. 2004-CA-002396-MR

DANNY BUSTLE

APPELLANT

v. APPEAL FROM ROCKCASTLE CIRCUIT COURT  
HONORABLE ROBERT E. GILLUM, CIRCUIT JUDGE  
INDICTMENT NO. 03-CR-00002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON AND TAYLOR, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

DIXON, JUDGE: In this consolidated appeal, Danny Bustle appeals *pro se* from the denial of Kentucky Rules of Civil Procedure (CR)

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<sup>1</sup> Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

60.02 post-conviction relief from Pulaski and Rockcastle Circuit Courts.

On January 10, 2003, Bustle was indicted by a Rockcastle County grand jury for Manufacture of Methamphetamine, First Offense and three counts of Receiving Stolen Property valued over \$300.00. Subsequently, on January 22, 2003, Bustle was indicted in Pulaski County on one count of Receiving Stolen Property over \$300.00 and Manufacture of Methamphetamine, First Offense.

On March 23, 2003, Bustle appeared in Rockcastle Circuit Court and pleaded guilty to the charges in all of his pending indictments.<sup>2</sup> The trial court sentenced Bustle to ten years' imprisonment on the Pulaski County indictment and ten years' imprisonment on the Rockcastle County indictments, with the sentences running concurrently.

In May 2004, Bustle filed identical motions for relief pursuant to CR 60.02 in Pulaski and Rockcastle Circuit Courts. Both motions were denied, and this consolidated appeal followed.

We first address the Commonwealth's argument that Bustle's appeal should be dismissed due to procedural infirmity. The Commonwealth is correct that Bustle should have sought relief under Kentucky Rules of Criminal Procedure (RCr) 11.42

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<sup>2</sup> Although not at issue in the present appeal, Bustle had a second indictment pending in Rockcastle Circuit Court for First Degree Unlawful Imprisonment, Fourth Degree Assault, and Custodial Interference. This indictment was also resolved by a guilty plea on March 23, 2003.

rather than CR 60.02. Gross v. Commonwealth, 648 S.W.2d 853, 857 (Ky. 1983). However, in this case, we decline to dismiss this appeal on procedural grounds, as we can succinctly address the merits of Bustle's claims.

Bustle contends his due process rights were violated because there was insufficient evidence to convict him of manufacturing methamphetamine. Bustle relies on Kotila v. Commonwealth, 114 S.W.3d 226 (Ky. 2003), which was abrogated by the Supreme Court in Matheny v. Commonwealth, 191 S.W. 3d 599 (Ky. 2006)<sup>3</sup>. Kotila had held that KRS 218A.1432 required possession of either all of the chemical precursors or all of the equipment required to produce methamphetamine. Id. at 240-41. The Court in Matheny held otherwise. Id. at 603.

Bustle also relies on Fiore v. White, 531 U.S. 225, 121 S.Ct. 712, 148 L.Ed.2d 629 (2001), which held that a state cannot, "consistently with the Federal Due Process Clause, convict [a defendant] for conduct that its criminal statute, as properly interpreted, does not prohibit." Id. at 228, 121 S.Ct. at 714. Accordingly, Bustle contends his due process rights were violated because, under the Court's interpretation of Kotila, he was not in violation of the statute since there was no evidence he possessed all of the methamphetamine precursors.

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<sup>3</sup> After the Kotila decision was rendered in 2003, the legislature amended KRS 218A.1432 in 2005. Following the amendment, violation of the statute requires possession of at least two precursor chemicals or two pieces of equipment used in the manufacture of methamphetamine.

Bustle's reliance on these cases is misplaced. He pleaded guilty to manufacturing methamphetamine and therefore forfeited any collateral attack as to the sufficiency of the evidence against him.

Entry of a voluntary, intelligent plea of guilty has long been held by Kentucky Courts to preclude a post-judgment challenge to the sufficiency of the evidence. The reasoning behind such a conclusion is obvious. A defendant who elects to unconditionally plead guilty admits the factual accuracy of the various elements of the offenses with which he is charged. By such an admission, a convicted appellant forfeits the right to protest at some later date that the state could not have proven that he committed the crimes to which he pled guilty. To permit a convicted defendant to do so would result in a double benefit in that defendants who elect to plead guilty would receive the benefit of the plea bargain which ordinarily precedes such a plea along with the advantage of later challenging the sentence resulting from the plea on grounds normally arising in the very trial which defendant elected to forego.

Taylor v. Commonwealth, 724 S.W.2d 223, 225 (Ky.App. 1986)

(citations omitted).

After review of the record, we conclude that Bustle entered a knowing and voluntary guilty plea after a lengthy plea colloquy pursuant to Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Consequently, relief pursuant to CR 60.02 is not warranted.

For the foregoing reasons, the orders denying Bustle's motions for CR 60.02 relief are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT

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