

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000091-MR

JAMES ALLEN PETERS

APPELLANT

v.

APPEAL FROM NELSON CIRCUIT COURT
HONORABLE JOHN DAVID SEAY, JUDGE
ACTION NO. 96-CR-00086

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE AND NICKELL, JUDGES; BUCKINGHAM,¹ SENIOR
JUDGE.

BUCKINGHAM, SENIOR JUDGE: James Allen Peters appeals from an order of
the Nelson Circuit Court denying his Kentucky Rules of Civil Procedure (CR)

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

60.02 motion to vacate the judgment sentencing him to 35 years in prison for criminal offenses. We affirm.

On August 21, 1996, a grand jury indicted Peters on charges of first-degree rape and first-degree assault. Peters was assigned counsel, and his counsel arranged for additional assistance from another public defender. On the day set for trial, Peters pled guilty and accepted a 35-year sentence for rape and a 25-year sentence for assault, with the sentences to run concurrently. Prior to final sentencing, Peters filed a *pro se* motion to withdraw his plea, which was denied. He then filed a *pro se* motion for reconsideration, which was also denied.

Prior to appearing before the court regarding his motion to withdraw his guilty plea, Peters' counsel informed him he was unable to represent him on the motion. Further, the assisting attorney was permitted to withdraw from representation. Peters asked for alternate counsel, but when the court stated that his original, current attorney would remain as counsel, Peters nodded in agreement. After the discussion of the motion to withdraw the guilty plea, Peters' counsel continued to represent Peters without objection. Judgment was entered according to the guilty plea, and the Kentucky Supreme Court affirmed on direct appeal on February 19, 1998.

On April 27, 1999, Peters filed a Kentucky Rules of Criminal Procedure (RCr) 11.42 motion, and counsel supplemented the motion on August

12, 1999. After an evidentiary hearing, a second supplemental motion was filed. The motion was denied on May 5, 2000. This Court affirmed the denial, and the Kentucky Supreme Court denied discretionary review.

In February 2003, counsel for Peters filed a CR 60.02 motion. He later moved the court to dismiss the motion, however. The court ordered the motion dismissed on October 6, 2005.

Thereafter, Peters sought relief in the federal courts. In September 2008, the Sixth Circuit of the U.S. Court of Appeals denied relief. Peters then filed a new CR 60.02 motion to vacate in the circuit court, asking the court to hold that a *Faretta* hearing is required before allowing a criminal defendant to proceed with hybrid representation. The court denied the motion, finding that the issues were addressed on direct appeal and in the RCr 11.42 motion. This appeal followed.

On appeal, Peters argues that he was forced into hybrid representation and was denied the warnings required by *Faretta*. The Commonwealth argues that Peters' claims were addressed in the 1999 RCr 11.42 motion and the 1997 direct appeal. The Commonwealth also argues that Peters' motion was not filed within a reasonable period of time and that Peters failed to demonstrate extraordinary circumstances justifying special reconsideration of matters that were addressed or could have been previously addressed. Peters responds that he could not have argued the issue of hybrid representation during his prior pleadings, and he further asserts that he filed his motion within a reasonable time since he filed the motion "immediately" after the Sixth Circuit's ruling.

In his motion, Peters states that he is entitled to relief under CR 60.02 because he entered into hybrid representation unknowingly, unintelligently, and involuntarily. He also claims that he was improperly denied a *Faretta* hearing before entering into hybrid representation and that he filed his motion within a reasonable time. *See Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

In *Ellison v. Commonwealth*, 994 S.W.2d 939, 940 (Ky. 1999), the Kentucky Supreme Court stated,

[a] final decision of this Court, whether right or wrong, is the law of the case and is conclusive of the questions therein resolved. It is binding upon the parties, the trial court, and the Court of Appeals. It may not be reconsidered by prosecuting an appeal from a judgment entered in conformity therewith.

Previously, in Peters' direct appeal to the Kentucky Supreme Court, he claimed the trial judge did not determine whether he was making a knowing and intelligent waiver of counsel before arguing his motion to withdraw his guilty plea. The Kentucky Supreme Court found "[h]e was never without the assistance of counsel, and his decision to limit his counsel's role in the proceedings does not rise to the level of reversible error." *Peters v. Commonwealth*, (Ky. 1998) No. 97-SC-316-MR. Consequently, the claim regarding his representation has been determined by the Kentucky Supreme Court and may not be addressed by this Court.

Peters claims the Sixth Circuit ruling permits him to raise CR 60.02 again, while still satisfying the reasonable time requirement. In *Huffaker v.*

Twyford, 445 S.W.2d. 124 (Ky. 1969), this Court recognized a CR 60.02 motion must be commenced within a reasonable period of time. Peters’ motion was entered 12 years after entry of the original judgment. Also, Peters claims he filed his motion “immediately” after the Sixth Circuit judgment, but his motion was filed over one-and-one-half years later. We agree with the circuit court that Peters did not file his motion within a reasonable time after entry of the original judgment or the Sixth Circuit opinion.

Peters argues that the trial court failed to provide him *Faretta* warnings as required by [Hill v. Commonwealth](#), 125 S.W.3d 221, 225 (Ky. 2004), in situations involving hybrid representation. However, even though Peters’ representation was classified as hybrid representation by the Sixth Circuit, the Kentucky Supreme Court previously decided that Peters always had the assistance of counsel. Consequently, *Faretta* warnings were unnecessary. As stated by the Sixth Circuit, “[t]he Kentucky Supreme Court dismissed this claim on direct appeal, finding no reversible error because Peters was never without the assistance of counsel and was therefore not denied his constitutional rights.” *Peters v. Chandler*, 292 Fed. Appx. 453, 457 (6th Cir. 2008). Furthermore, “[t]he court also found that Hall’s representation was not illusory due to any conflict of interest, noting that Peters offered no evidence supporting the misrepresentation charge and made no specific objection to Hall continuing as counsel of record.” *Id.* at 456. Even though the Sixth Circuit labeled Peters’ representation as hybrid representation, it recognized that “the Kentucky Supreme Court’s decision was not

unreasonable.” *Id.* at 458. Thus, according to the Kentucky Supreme Court’s findings, *Faretta* warnings were not required.

Peters’ claims were previously heard and determined by the Kentucky Supreme Court, and he has failed to demonstrate why he is entitled to special relief and reconsideration. Accordingly, the order denying Peters’ CR 60.02 motion is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

James Allen Peters, *pro se*
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Gregory C. Fuchs
Assistant Attorney General
Frankfort, Kentucky