

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-002232-MR

WILLIAM R. HAYNES

APPELLANT

v.

APPEAL FROM BARREN CIRCUIT COURT
HONORABLE PHIL PATTON, JUDGE
ACTION NO. 08-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, KELLER AND MOORE, JUDGES.

KELLER, JUDGE: William R. Haynes (Haynes) appeals *pro se* from an order of the Barren Circuit Court denying his motion made pursuant to Kentucky Rule of Civil Procedure (CR) 60.02. For the following reasons, we affirm.

FACTS

In October 2007, Haynes shot Luis Alberto Rodriguez (Rodriguez). He then placed Rodriguez's body in a friend's truck, drove to a lake, and threw the

body into the water. According to the autopsy, Rodriguez's death was due to a gunshot wound in the back, although the report also stated that drowning could not be entirely excluded as a "contributory factor." Haynes cleaned blood from the truck at a carwash, where his actions were captured on videotape. Haynes's accomplice testified at trial that he helped Haynes dispose of the body and assisted him in washing the truck as well as disposing of the gun. Haynes was charged with murder and tampering with physical evidence.

Following a jury trial, Haynes was convicted of manslaughter in the second degree and tampering with physical evidence. He received sentences of six years and five years, respectively, on the charges, to be served consecutively for a total sentence of eleven years. Haynes did not file a direct appeal.

On August 27, 2010, more than two years after the entry of the final judgment, Haynes filed a CR 60.02 motion to vacate the tampering conviction, and for a full evidentiary hearing. The trial court denied the motion without a hearing and this appeal followed.

STANDARD OF REVIEW

This Court reviews the denial of a CR 60.02 motion for an abuse of discretion by the trial court. *Stoker v. Commonwealth*, 289 S.W.3d 592, 596 (Ky. App. 2009). Such an abuse occurs if the trial court's decision was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Id.*

ANALYSIS

Haynes raises three arguments on appeal: 1) that his conviction for tampering and manslaughter violated Kentucky Revised Statute (KRS) 505.020; 2) that the Commonwealth failed to prove he acted with the requisite intent to sustain the tampering charge; and 3) that the jury instructions included facts relating to the tampering charge that were not stated in the indictment.

As a preliminary matter, we note that Haynes's arguments could have been raised on direct appeal and thus are inappropriate for relief pursuant to CR 60.02. "[T]he proper procedure for a defendant aggrieved by a judgment in a criminal case is to directly appeal that judgment, stating every ground of error which it is reasonable to expect that he or his counsel is aware of when the appeal is taken." *Gross v. Commonwealth*, 648 S.W.2d 853, 857 (Ky. 1983). "Civil Rule 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could 'reasonably have been presented' by direct appeal or RCr [Kentucky Rule of Criminal Procedure] 11.42 proceedings." *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997).

We recognize that "[p]ro se pleadings are not required to meet the standard of those applied to legal counsel." *Beecham v. Commonwealth*, 657 S.W.2d 234, 236 (Ky. 1983). However, even if we hold Haynes to the less-stringent standard that is sometimes afforded to *pro se* litigants, and review his claims, they are without merit.

Haynes first argues that, pursuant to KRS 505.020, the charge of tampering with evidence should have been treated as a lesser-included offense of

the charge of manslaughter, because both arose from the same act - throwing Rodriguez's body into the lake.

KRS 505.020(1)(a) provides that

1) When a single course of conduct of a defendant may establish the commission of more than one (1) offense, he may be prosecuted for each such offense. He may not, however, be convicted of more than one (1) offense when:

(a) One offense is included in the other, as defined in subsection (2)[.]

According to Haynes, the trial court violated KRS 505.020 because the Commonwealth used the same elements to establish both offenses. We disagree.

KRS 524.100 states that:

(1) A person is guilty of tampering with physical evidence when, believing that an official proceeding is pending or may be instituted, he:

(a) Destroys, mutilates, conceals, removes or alters physical evidence which he believes is about to be produced or used in the official proceeding with intent to impair its verity or availability in the official proceeding; or

(b) Fabricates any physical evidence with intent that it be introduced in the official proceeding or offers any physical evidence, knowing it to be fabricated or altered.

Pursuant to KRS 507.040(1), "[a] person is guilty of manslaughter in the second degree when he wantonly causes the death of another person[.]"

Thus, tampering with evidence cannot be a lesser-included offense of manslaughter, because the two crimes require entirely different elements of proof.

Furthermore, ample evidence sustained both charges at Haynes's trial. As we have noted, the autopsy report stated that Rodriguez died of a gunshot wound with drowning as a possible contributing factor. That evidence, coupled with the fact that Haynes shot Rodriguez and threw him off a bridge, is sufficient to support Haynes's conviction of second-degree manslaughter. Moreover, even if evidence that Haynes threw Rodriguez's body off a bridge were excluded, evidence that Haynes moved the body from the site of the shooting, cleaned the truck he used to move the body, and disposed of the gun, was more than sufficient to support his tampering with evidence conviction.

Moreover, we note that Haynes's reliance on *Sexton v. Commonwealth*, 317 S.W.3d 62 (Ky. 2010), is misplaced. In *Sexton*, a registered sex offender was observed videotaping children swimming at a pool, but the videotape was never recovered. He was charged and convicted of tampering with physical evidence. The Kentucky Supreme Court reversed his conviction because the Commonwealth failed to prove that the "physical evidence" - the videotape - ever existed and thus "did not present evidence that would prove all elements of tampering with physical evidence[.]" *Sexton*, 317 S.W.3d at 64-65. In Haynes's case, there was ample evidence, such as transporting the body and cleaning the truck, to prove all the elements of tampering.

Haynes's second and related argument is that the Commonwealth failed to prove he acted with the requisite intent to sustain the tampering charge. Haynes contends that his actions that constitute tampering, such as washing the truck or dumping Rodriguez's body, occurred before the Commonwealth convened a grand jury. Therefore, according to Haynes, he could not have known that official proceedings were about to or had been instituted. However, knowledge that an official proceeding is about to be or has been commenced is not required to sustain a conviction under the tampering statute.

The official commentary to KRS 524.100 clarifies that a conviction of this offense may be obtained even if the tampering occurred prior to the initiation of an official proceeding. “[I]t is sufficient if the defendant believes an official proceeding may be instituted and if he engages in the proscribed conduct with the specified intent to impair the truth or availability of evidence he believes will be used”

Burdell v. Commonwealth, 990 S.W.2d 628, 633 (Ky. 1999) (citations omitted). A jury could easily infer from Haynes’s actions following the shooting of Rodriguez that he had “guilty knowledge and an intent to conceal” the circumstances of the death and his involvement therein. *Philips v. Commonwealth*, 17 S.W.3d 870, 876 (Ky. 2000).

Finally, Haynes argues that the jury instructions included facts regarding the tampering, such as washing the truck and disposing of the gun, which were not contained in the indictment. There is no requirement that an indictment contain all the detailed facts of a charged offense.

[I]f the defendant needs information concerning the details of the charge against him to enable him to prepare his defense he should be supplied them through a requested bill of particulars, rather than that a requirement be made that every indictment set forth all details of the charge.

Finch v. Commonwealth, 419 S.W.2d 146, 147-48 (Ky. 1967). In response to Haynes's pretrial motion for discovery and a Bill of Particulars, the Commonwealth produced two volumes of discovery which provided Haynes with ample notice of the evidence against him, including the statement of his accomplice, the blood samples taken from his property, and the videotape of Haynes and his accomplice cleaning the truck used to transport the body.

Finally, the trial court did not err in refusing to grant an evidentiary hearing on the motion. "A movant is not entitled to a hearing on a CR 60.02 motion unless he affirmatively alleges facts which, if true, justify vacating the judgment and further allege[s] special circumstances that justify CR 60.02 relief." *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000) (internal quotation marks and citation omitted). As our review has indicated, Haynes's motion failed to allege facts and special circumstances that would justify CR 60.02 relief.

CONCLUSION

For the foregoing reasons, the order denying Haynes's CR 60.02 motion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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