

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001642-MR

ANTONIO L. BRADLEY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 05-CR-000355

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND
REMANDING

** ** * ** * ** *

BEFORE: CLAYTON, NICKELL AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Antonio L. Bradley appeals the judgment and sentence of the Jefferson Circuit Court pursuant to a conditional plea of guilty but mentally ill.

For the reasons stated herein, we reverse and remand.

On February 3, 2005, in 05-CR-000355, a Jefferson County grand jury indicted Bradley on two counts of attempted arson in the first degree. At the time, Bradley had already been indicted for murder and tampering with physical evidence in 04-CR-003162. Although these cases were never consolidated, hearings for Bradley's attempted arson case and his murder and evidence tampering case were held together, including his suppression hearing, his acceptance of his conditional guilty pleas, and his sentencing.

On March 21, 2006, the trial court conducted a suppression hearing regarding Bradley's statements made during a police interrogation. The suppression hearing applied to his murder and tampering with physical evidence case and to his attempted arson case. During the hearing, Louisville Metro Police Detective Gary Williamson, the lone witness, testified that he interviewed Bradley, regarding the murder, on November 4, 2004. He testified that he informed Bradley that Bradley could end the questioning at any time by requesting an attorney or by refusing to answer any further questions.

Detective Williamson testified that he asked Bradley about his whereabouts on the day of the murder. He further testified that he falsely informed Bradley that there was a police officer, outside of the interview room, who could identify him as running from the murder scene. Detective Williamson then testified that Bradley asked him if he was going to jail. Detective Williamson testified that he informed Bradley that there would be consequences.

At one point during the suppression hearing, the parties extensively discussed whether the videotape of the interrogation should be played. The parties agreed that the only issue during the video was whether Bradley had invoked his right to counsel and his right to remain silent. Eventually, the trial court decided that it would review the video *in camera* following the hearing. After reviewing the video of the interview, the trial court found the most important portion of the interview went as follows:

Williamson: Well here's the deal. Well you know what, you're right, but it can be a lot worse. You stand up and you tell the truth. Be a man and take what's coming.... You can either be a cold hearted son-of-a-bitch or you can be a man about it with some remorse. Tony [Bradley] only you can make that decision. I cannot do that for you.

Bradley: So I'm going to [be] sitting behind bars now?

Williamson: Well you know what, it's your choice. You're going to do some time. I'm not going to sit here and lie to you. Okay.

Bradley: A lot of time.

Williamson: Well I don't know. I don't know the story. Why don't you run it by me and we'll look at it.

Bradley: Well, you know, I need a lawyer or something.

Williamson: Do what?

Bradley: A lawyer.

Williamson: That's your right. We read you your rights when you come [sic] in here. But I, I'm totally convinced you do what is the right thing and you'll be better off. You see where I'm at? You feel what I'm saying? Do you want to tell us? Just tell us what happened. It's nothing

we can't get through, I mean there may be circumstances here that change this whole thing. Only you can tell us. It's a big step.

Bradley: I did do it.

Williamson: You did what. You shot him? Why?

Bradley: Cause he was trying to get me.

Williamson: What was he doing?

Bradley: If I didn't get him he was going to get me.

During the hearing, Detective Williamson testified that Bradley asked him if Bradley should have an attorney. When asked why he did not terminate the questioning following this remark, Detective Williamson testified that he believed Bradley was just talking aloud rather than invoking his right to counsel. He further testified that he believed Bradley was asking, "Should I have an attorney?" He testified that he informed Bradley that the decision was up to Bradley and that he could not give legal advice. Detective Williamson then testified that Bradley stated that he did not want to talk about the crime and wanted to go to jail. He testified that he believed Bradley was just experiencing normal hesitation to talk.

During the hearing, Bradley argued that his statements to police should be suppressed because he requested the assistance of counsel and that he invoked his right to remain silent during the interview. At the conclusion of the hearing, the trial court found that Bradley did not make a clear request for an attorney but simply asked if he needed one. Further, the trial court found that

Bradley's invocation of his right to remain silent was ambiguous and, thus, insufficient to trigger his Fifth Amendment protection.

During Bradley's criminal proceedings, he was determined to be competent to stand trial after multiple mental evaluations. On June 9, 2009, Bradley entered into two conditional guilty pleas resolving his cases. In 04-CR-003162, Bradley entered a conditional plea of guilty but mentally ill to murder and tampering with physical evidence for a twenty-year sentence. In 05-CR-000355, Bradley entered a conditional plea of guilty but mentally ill to two counts of attempted arson in the first degree for a ten-year sentence.

On July 17, 2009, Bradley filed *pro se* motions to withdraw his guilty plea and for the removal of his public defender. On August 4, 2009, the trial court heard and denied these motions. The trial court then sentenced Bradley to thirty-years' imprisonment under his guilty pleas. Pursuant to RCr 12.02, his murder and tampering case, resulting in a twenty-year sentence, was appealed directly to our Supreme Court. In 05-CR-000355, Bradley received a ten-year sentence for two counts of first-degree attempted arson. Because this sentence was not for twenty or more years, this case was appealed directly to this Court.

Subsequently, after it denied Bradley's motion to consolidate his two cases on appeal, our Supreme Court, in *Bradley v. Commonwealth*, 327 S.W.3d 512 (Ky. 2010), addressed Bradley's right of counsel claim on the merits and concluded that his constitutional right to counsel was violated. The court found that police violated Bradley's constitutional rights by continuing his interrogation

after he invoked his right to counsel. *Id.* at 516. The court then concluded that Bradley's two remaining arguments, regarding his right to remain silent and the denial of his motion to withdraw his guilty pleas, were rendered moot due to the relief it granted Bradley on his right of counsel assignment of error. *Id.* at 514.

We begin our analysis by observing that a decision of our Supreme Court, whether right or wrong, is the law of the case and shall be conclusive of the questions therein resolved upon all lower courts. *Ellis v. Jasmin*, 968 S.W.2d 669, 670 (Ky. 1998). This Court must abide by the decision of our Supreme Court that Bradley's constitutional right to counsel was violated by police. In so doing, we note that Bradley entered a conditional guilty plea in his arson case.

RCr 8.09, regarding conditional pleas, provides the following:

With the approval of the court a defendant may enter a conditional plea of guilty, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified trial or pretrial motion. A defendant shall be allowed to withdraw such plea upon prevailing on appeal.

Therefore, because we conclude that Bradley's constitutional violation claim concerning his right to counsel must prevail, we reverse his conviction on two counts of first-degree arson and remand to the trial court.

Bradley contends that the trial court erred when it concluded that he did not invoke his right to remain silent during police questioning. However, we conclude that this issue is moot in that we have already reversed Bradley's conviction and excluded any of his statements following his request for counsel.

Because his request for counsel preceded any invocation of his right to remain silent, it necessarily follows that any statements that he gave after his invocation of his right to remain silent is excluded regardless of whether he invoked his right to remain silent or not. Therefore, we will not address this matter any further. *Ashley v. University of Louisville*, 723 S.W.2d 866, 868 (Ky.App. 1986) (generally, an issue is moot if the requested relief has already been obtained).

Bradley next contends that the trial court erred by refusing to permit him to withdraw his conditional guilty plea. For the same reason as Bradley's last argument, we conclude that this issue has been rendered moot. *Id.* We have reversed his conviction which necessarily invalidates his guilty plea.

For the foregoing reasons, the Jefferson Circuit Court's judgment of conviction on two counts of first-degree attempted arson is reversed and this case is remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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