

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001710-MR

CHARLES FRANKLIN LAYNE

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 98-CR-00164

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, LAMBERT, AND VANMETER, JUDGES.

VANMETER, JUDGE: Charles Franklin Layne, Jr. appeals *pro se* from the Pike Circuit Court order denying his motion for post-conviction relief pursuant to CR¹ 60.02(e) and (f). For the following reasons, we affirm.

In 1998, Layne was indicted by the Pike County Grand Jury on charges of capital murder, assault in the fourth degree, and violation of a protective order.

¹ Kentucky Rules of Civil Procedure.

Less than a year later, Layne filed a motion to enter a plea of guilty to each charge. The motion provided that “the Court may impose any punishment within the range provided by law - Count I [murder], 20 years to Life, Count II [assault in the fourth degree], up to 12 months in jail, Count III [violation of a protective order], up to 12 months in jail.” Layne signed the motion, acknowledging that the plea was knowingly, intelligently and voluntarily made.

Thereafter, Layne filed mitigating factors for the court to consider prior to sentencing, specifically requesting the court to sentence him “to a term of years as opposed to a life sentence.” On April 9, 1999, the court entered a final judgment adjudging Layne guilty of capital murder, fourth-degree assault, and violation of a protective order, and sentencing him to life imprisonment. No direct appeal was taken from the final judgment.

In August 2005, Layne moved *pro se* for post-conviction relief pursuant to RCr² 11.42, claiming that his trial counsel was ineffective by failing to request that the trial judge recuse from the case due to an alleged conflict of interest and failing to instruct Layne on the complete range of penalty options. By order entered August 22, 2005, the trial court denied Layne’s RCr 11.42 motion on the basis that per RCr 11.42(10), the motion was to be filed within three years after the final judgment, unless certain exceptions apply. The court found that Layne’s RCr 11.42 motion was filed over six years after the final judgment was entered and no

² Kentucky Rules of Criminal Procedure.

exceptions applied so as to allow his claims to proceed. No appeal was taken from this order.

In April 2010, approximately twelve years after the final judgment was entered, Layne moved *pro se* for the judgment to be set aside pursuant to CR 60.02(e) and (f), and RCr 10.26, and for the trial judge to recuse from the case. Layne also requested appointment of counsel and an evidentiary hearing. By order entered April 29, 2010, the court denied his motion to set aside the judgment, finding that CR 60.02(e) did not apply since the final judgment had not been reversed or vacated and was still equitable, and that any relief sought under CR 60.02(f) was untimely. The court further found that Layne's claim for relief under RCr 10.26 was misplaced since the palpable error standard under that rule is only to be considered in a motion for a new trial or by an appellate court on direct appeal. In addition, the court found that all of Layne's claims were made, or should have been made, in his prior motion for RCr 11.42 relief. Finally, the court found no reason to recuse from the case. This appeal followed.

The standard for reviewing a trial court's denial of a CR 60.02 motion is whether or not the trial court abused its discretion. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky.App. 2000) (citing *Brown v. Commonwealth*, 932 S.W.2d 359, 361 (Ky. 1996)). The test for abuse of discretion is whether the trial court's decision was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted).

On appeal, Layne argues the trial court abused its discretion by denying his CR 60.02 motion and by declining to recuse from the case. We disagree.

Kentucky law has an established structure to its post-conviction relief process. In *Gross v. Commonwealth*, 648 S.W.2d 853 (Ky. 1983), the Kentucky Supreme Court described

[t]he structure provided in Kentucky for attacking the final judgment of a trial court in a criminal case is not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals, in RCr 11.42, and *thereafter* in CR 60.02. CR 60.02 is not intended merely as an additional opportunity to raise [] defenses. It is for relief that is not available by direct appeal and not available under RCr 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief.

Id. at 856.

In this case, Layne's CR 60.02 motion requested that his conviction be set aside because he was not informed of the full range of penalty options on the murder charge and thus was denied a fair trial. Layne also argued that the trial judge's alleged conflict of interest resulting from his familiarity with the victim's family was prejudicial. However, because these claims of error are the same as those presented in his prior RCr 11.42 motion, and no appeal was taken from the order denying that motion, Layne's present claims are procedurally barred.

That being said, his claims are without substantive merit as well. CR 60.02 limits relief to the following circumstances:

- 1) The first three grounds specified in the rule [(a) mistake, inadvertence, surprise or excusable neglect, (b)

newly discovered evidence, (c) perjury] are limited to application for relief “not more than one year after the judgment.”

2) The additional specified grounds for relief are (a) fraud, (b) the judgment is void, vacated in another case, satisfied and released, or otherwise no longer equitable, or (c) other reasons of an “extraordinary nature” justifying relief. These grounds are specific and explicit. Claims alleging that convictions were obtained in violation of constitutionally protected rights do not fit any of these grounds except the last one, “any other reason of an extraordinary nature justifying relief.”

Gross, 648 S.W.2d at 857.

Layne argues that his constitutional rights were violated because his guilty plea was not knowingly and voluntarily made; specifically, he contends that he did not know he could receive a life sentence for the murder count upon entering a plea of guilty.³ However, a review of the record reveals that Layne was informed of the possible sentencing range; his motion to enter a plea of guilty expressly provided for a life sentence on the murder count and the plea colloquy conducted by the court confirmed the same. In addition, the document Layne submitted for the court to consider as mitigating evidence requested that the court impose a term of years as opposed to a life sentence. During final sentencing, Layne’s attorney reiterated this request. Thus, despite Layne’s insistence, the record does not support a finding that he was unaware he could receive a life sentence on the murder count.

³ Under *Gross*, Layne’s claim for CR 60.02 relief falls within section (f) – reasons of “an extraordinary nature” justifying relief. Layne also moves for relief under CR 60.02(e), however, his argument that the judgment is inequitable under this section is based on the same grounds as his argument under section (f) – violation of his constitutional rights. As a result, we decline to address independently the merits of his claim under section (e).

Nor does the record reflect that his plea was involuntarily made. During the plea colloquy, Layne represented to the court that he had fully discussed the matter with his attorney, he understood the charges against him, he was pleading guilty of his own free will, and that no one had pressured him into pleading guilty or promised him he would benefit in any way. When asked by the court to explain why he decided to enter a plea of guilty, Layne stated that he was ready to receive punishment for the crimes he committed and to accept responsibility for his actions. He further stated that he did not want to continue the legal process or to hurt both sides anymore, especially the victim's kids who would have to testify if this matter proceeded to trial. Therefore, even construing Layne's claims of error liberally, the record does not show that his plea of guilty was involuntarily or unknowingly made. *See Case v. Commonwealth*, 467 S.W.2d 367, 368 (Ky. 1971) (*pro se* pleadings prepared by a prisoner are not to be held to the same standard as those prepared by legal counsel and are often construed liberally).

Finally, Layne maintains that his case was prejudiced because the trial judge knew the victim's family and the victim's father was, or still is, a deputy sheriff for the Pike County Sheriff's Department. However, Layne fails to establish how these facts demonstrate that the trial judge was biased or otherwise unable to treat his case in a fair manner. Therefore, we uphold the trial judge's decision not to recuse.

The order of the Pike Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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