

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000815-MR

OSCAR D. ADAMS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE FREDERIC COWAN, JUDGE
ACTION NO. 10-CR-000756

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: D. LAMBERT, THOMPSON AND VANMETER, JUDGES.

THOMPSON, JUDGE: Oscar D. Adams, *pro se*, appeals from an order denying his motion to resubmit his previous Rules of Criminal Procedure (RCr) 11.42 motion for a new ruling to make his appeal timely.

Adams is hard of hearing and graduated from a school for the deaf. He communicates through sign language and speaking.

In 2010, Adams was interviewed by a police officer in connection with accusations that he sexually abused his live-in girlfriend's eight-year-old daughter in December 2009. The recorded video interview begins with the officer informing Adams that he has not been arrested and is free to leave at any time. The video shows Adams answering questions appropriately, although sometimes the officer had to repeat or rephrase the question before Adams understood and responded. During the interview, Adams initially denied abusing the child, but he eventually confessed to licking the child's vagina for a few seconds while he believed she and the other people in the home were asleep, and then stopping and walking away. Adams confirmed this confession again later in the recording.

In 2010, Adams was indicted for first-degree sodomy of a victim under twelve pursuant to Kentucky Revised Statutes (KRS) 510.070(1)(b)2, a class A felony requiring a sentence of twenty to fifty-years' incarceration or life. During court proceedings, Adams was provided a sign language interpreter.

Pursuant to a plea agreement, Adams pled guilty to an amended charge of first-degree sodomy, forcible compulsion, KRS 510.070(1)(a), a class B felony requiring a sentence of ten to twenty-years' incarceration, in exchange for a recommended sentence of fifteen years. Adams was sentenced in accordance with this plea agreement.

On April 4, 2013, Adams filed a motion to vacate his judgment based upon ineffective assistance of counsel, asked to withdraw his plea and proceed to trial. Adams primarily argued his counsel was ineffective for failing to move to

suppress his confession because he was not provided with a sign language interpreter during the police interview even though he met the criteria to be provided with one under KRS 30A.400 and KRS 30A.410. However, Adams did not argue his confession was not knowing or voluntary, or was the result of misunderstanding a question. Adams also argued he was innocent and could not have abused the child because he was never alone with her.

On July 2, 2013, the circuit court dismissed Adams's motion because it was unverified. On July 5, 2013, Adams filed a motion to vacate the summary dismissal and supplement his prior motion with a proper verification.

While this motion was pending, on July 29, 2013, Adams filed a petition for a writ of mandamus with this Court arguing the circuit court was not authorized to dismiss his motion. While this petition was pending, on December 20, 2013, the circuit court sustained Adams's motion to vacate and considered the April 4, 2013, motion on the merits. The circuit court denied the motion determining a review of the police interview revealed Adams never asked for an interpreter, was able to communicate appropriately with police and there was no evidence his confession was anything other than knowing and voluntary, therefore, counsel did not err by failing to file a motion to suppress the interview. The circuit court also determined Adams's claim of innocence because he was never left alone with the child was refuted by his confession that he acted inappropriately while the child's mother was asleep. Adams's petition for a writ of mandamus was subsequently denied as moot.

On January 17, 2014, Adams filed a motion to alter, amend or vacate. He argued this motion should be considered timely because the circuit court's order denying his motion on the merits was incorrectly sent to his mother's address rather than to his correctional address. On February 28, 2014, the circuit court denied this motion.

On April 15, 2014, Adams filed a motion to resubmit his July 5, 2013, motion providing verification of his April 4, 2013, motion to vacate his judgment on the basis of ineffective assistance of counsel and requested a new order so he could timely appeal. The circuit court denied this motion that same day. On May 16, 2014, Adams filed a notice of appeal from the order denying this motion.

Although Adams's appeal is from the April 15, 2014, order denying his motion to resubmit his July 5, 2013, motion, his appellate brief and reply only argue the merits of the circuit court's December 20, 2013, order denying his motion for RCr 11.42 relief. The December 20, 2013, order is not properly before us because it was never appealed. The only order properly before this court for review is the April 15, 2014, order.

Even if we could somehow construe Adams's present notice of appeal to include the December 20, 2013, order, the notice of appeal would be untimely as to that order and requires automatic dismissal. *Stewart v. Kentucky Lottery Corp.*, 986 S.W.2d 918, 921 (Ky.App. 1998); CR 73.02(2).

As to our review of the April 15, 2014, order, we determine the circuit court acted appropriately in denying Adams's request that it rule a second time on a

previously ruled on motion, in order to make an appeal timely. The December 20, 2013, order was a final and appealable judgment. CR 54.01. While Adams may have been delayed in learning of this order, he still had sufficient time to file an appeal from it as is evident from him filing an untimely motion to alter, amend or vacate before the time for taking an appeal had elapsed. However, ten days after this final order, the circuit court lost jurisdiction over this case because its jurisdiction was not extended by rule or statute. *Rollins v. Commonwealth*, 294 S.W.3d 463, 466 (Ky.App. 2009). Therefore, the circuit court was without any authority to rule on a previously decided motion for the purpose of making an appeal from it timely almost four months after its final order on this motion.

Additionally, were the December 20, 2013, order properly before us to review, we would affirm. Assuming Adams qualified for an interpreter under KRS 30A.410(1)(a)1, he was not in custody when he confessed and was, therefore, not required to have an interpreter during his police interview under KRS 30A.400(1) and (2). KRS 30A.400(2) specifically provides “[t]his subsection shall not deny a person the right to make a voluntary confession.” Therefore, counsel could not have been ineffective in failing move to suppress Adams’s statement under these circumstances. We also agree with the circuit court’s determination that Adams’s claim of actual innocence is refuted by his confession.

Accordingly, we affirm the Jefferson Circuit Court’s order denying Adams’s motion to resubmit.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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