

Commonwealth Of Kentucky

Court Of Appeals

NO. 1996-CA-002904-MR
and
NO. 1996-CA-002905-MR

WILLIAM EDWARD MEREDITH

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ELLEN B. EWING, JUDGE
ACTION NO. 93-CR-2540

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: GUIDUGLI, JOHNSON and KNOPF, Judges.

GUIDUGLI, JUDGE. William Edward Meredith (Meredith) appeals, pro se, from two orders of the Jefferson Circuit Court denying his CR 60.02 and RCr 11.42 motions. Finding no merit to the claims of error raised by Meredith, we affirm.

Meredith arrived at the River City Correctional Center (RCCC) on April 19, 1993, for thirty (30) days, as a condition of his probation on a felony escape charge. On May 18, 1993, Meredith signed out on work release and indicated a return time

of 6:30 p.m. Meredith failed to return to RCCC or call to request a time extension. A warrant was issued for his arrest. On August 8, 1993, Meredith was arrested after a routine traffic stop revealed the outstanding arrest warrant.

Meredith was indicted in Jefferson Circuit Court on November 6, 1993, for second-degree escape. After his indictment, his public defender and the Commonwealth reached a plea agreement. In exchange for a plea of guilty, the Commonwealth agreed to recommend a sentence of two years to be served consecutively with any current time and opposed probation. Meredith accepted the agreement and agreed to plead guilty. At formal sentencing, Meredith's attorney moved the court for probation. The court concurred but decided to depart from the plea agreement Meredith had reached with the Commonwealth. The court then imposed a five-year probated sentence. The videotape record clearly indicates that Meredith was given the opportunity to withdraw his plea at that time, but he declined to do so.

A written judgment was entered on May 2, 1994, erroneously showing Meredith's sentence as two years imprisonment, probated for five years. On November 3, 1994, the Commonwealth moved to correct the judgment to conform to the sentence actually imposed by the court. On November 23, 1994, the court corrected the judgment pursuant to RCr 10.10 to show Meredith was sentenced to five years, probated for five years. On December 9, 1994, Meredith's probation was revoked after being arrested in Hillsborough, Florida, because he violated the

conditions of his probation by, inter alia, leaving Jefferson County, Kentucky, without permission.

On December 15, 1995, Meredith filed a CR 60.02 motion to vacate sentence and, on April 22, 1996, Meredith filed a RCr 11.42 motion to vacate sentence based on ineffective assistance of counsel. These motions were denied in separate orders entered October 2, 1996, and October 8, 1996, respectively. This appeal raises two issues from the RCr 11.42 motion and one issue not otherwise presented to the trial court.

Meredith's first assignment of error is that he was denied due process of law when the Jefferson Circuit Court corrected the judgment seven months after it was initially entered. Although this alleged error was not presented to the trial court, it is easily addressed. Meredith argues that the trial court "lost jurisdiction over the case" after ten days. Meredith cites Commonwealth v. Marcum, Ky., 873 S.W.2d 207 (1994); Galusha v. Commonwealth, Ky., 834 S.W.2d 696 (1992); McMurray v. Commonwealth, Ky., 682 S.W.2d 794 (1985) and CR 59.05 as supportive of his argument.

Meredith was not denied due process of law. The videotape record of the sentencing hearing clearly shows that Meredith understood the court would not approve the original plea agreement, ordered a sentence of five years probated, and offered Meredith the opportunity to withdraw his guilty plea. Meredith declined to withdraw his plea of guilty. Thereafter, the trial court did not lose jurisdiction to correct the mistake in the

written record simply because ten days had passed. RCr 10.10 specifically states that clerical mistakes such as the one made in this case, "...may be corrected by the court at any time on its own initiative or upon the motion of any party... ." The cases cited by Meredith simply do not apply to the facts presented here. Those cases involved various attempts to modify or increase sentences actually imposed after the expiration of ten days. Here, the sentence was never increased - the record was simply corrected to conform to what actually occurred at the sentencing hearing. We find no merit in this allegation of error.

Meredith's second assignment of error is that he was denied due process of law when the trial court "welshed" on its plea bargain agreement. This argument indicates Meredith does not understand the process of plea negotiations. A long line of cases hold that the Commonwealth (i.e., the prosecution) is bound by its plea agreements. The court is never bound by such an agreement. RCr 8.10. In the event the court decides to reject a plea agreement reached between a defendant and the Commonwealth, RCr 8.10 dictates the procedure to be followed:

If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court...that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

This is exactly what happened in this case. The Commonwealth kept its agreement and recommended a sentence of two years to be served consecutively with any current time and opposed probation. At formal sentencing, Meredith's attorney moved the court for probation. The court concurred but decided to depart from the plea agreement. The court noted the exact terms of that plea agreement. The court then imposed a five year sentence, probated for five years. The videotape record clearly indicates that Meredith was given the opportunity to withdraw his plea at this time, but he declined to do so. The procedure required by law was followed to the letter. There was no error and Meredith was not denied due process of law.

Meredith's final assignment of error is that he was denied due process of law when his public defender failed to object when "the Commonwealth welshed on it's [sic] plea bargain agreement." As stated above, there was no error or breach of standard procedure. The Commonwealth kept its plea agreement to Meredith - the court simply chose not to follow the recommendation. Meredith agreed to accept the longer five year sentence (to be probated). Counsel was not ineffective.

Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

In fact, counsel was effective in securing Meredith's freedom. The recommendation the Commonwealth agreed to make, included a promise it would object to probation. On counsel's motion, and over the objection of the Commonwealth, Meredith was

given his freedom by the court - subject to five years probation. All Meredith had to do to remain a free man was abide by the terms of his probation. That he was unable to do so is not his counsel's fault.

We affirm the trial court's summary denial of Meredith's CR 60.02 and RCr 11.42 motions.

ALL CONCUR.

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