

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001691-MR

TODERICK L. MOORE-BAKER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 92-CR-001927

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * **

BEFORE: BUCKINGHAM, DYCHE, AND MILLER, JUDGES.

MILLER, JUDGE: Toderick L. Moore-Baker (Moore-Baker) brings this *pro se* appeal from a June 17, 1997 order of the Jefferson Circuit Court. We affirm.

On January 27, 1993, Moore-Baker entered guilty pleas to two counts of murder (Ky. Rev. Stat. (KRS) 507.020), one count of kidnapping (KRS 509.040), and one count of receiving stolen property over \$100 (KRS 514.110). In addition, Moore-Baker entered guilty pleas pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), to one count of

murder and one count of criminal facilitation to commit robbery in the first degree (KRS 506.080 and 515.020). In exchange for Moore-Baker's plea, the Commonwealth recommended a sentence of life without parole on two of the murder charges and the kidnapping charge. It recommended 20 years' imprisonment on the remaining murder charge, 5 years on the charge of criminal facilitation to commit robbery, and 5 years on the charge of receiving stolen property. In a June 1, 1993 judgment, the circuit court imposed the sentence recommended by the Commonwealth. On June 17, 1997, Moore-Baker filed a Ky. R. Crim. P. (RCr) 11.42 motion to vacate said judgment. The circuit court denied same on June 18, 1997. This appeal followed.

Moore-Baker first contends that it was unconstitutional to use charges contained within the indictment as aggravating factors to enhance the penalty on other charges within the same indictment. This same issue was addressed by the Kentucky Supreme Court in Wilson v. Commonwealth, Ky., 836 S.W.2d 872 (1992), *cert. denied* 507 U.S. 1034, 113 S. Ct. 1857, 123 L. Ed. 2d 479 (1993), wherein the Court held that rape and robbery convictions at the guilt phase could be used at the penalty phase to prove aggravating circumstances for murder and kidnapping. The Court determined that the defendant was not thereby subjected to double jeopardy or multiple punishments for the same crime.¹ Likewise, we do not believe Moore-Baker's constitutional rights were violated in this respect.

¹Although Moore-Baker articulates this problem to be a violation of his due process rights, we perceive this to be an issue of double jeopardy.

Moore-Baker next avers that the circuit court failed to sentence him in accordance with KRS 532.025. He complains that he was denied the right to a separate penalty phase and to have the circuit court make a specific finding of aggravating circumstances. Additionally, he alleges that he was denied the right to be indicted by a properly empaneled grand jury. We believe Moore-Baker waived the above defenses when he pled guilty. See Hughes v. Commonwealth, Ky., 875 S.W.2d 99 (1994); Skaggs v. Commonwealth, Ky. App., 885 S.W.2d 318 (1994); and Toppass v. Commonwealth, Ky. App., 799 S.W.2d 587 (1990).

Alternatively, Moore-Baker argues that "no indictment has been returned by a Jefferson County Grand Jury on any offense under the judgment." He bases this claim on his allegation that there is no record of the grand jury convening to return same. This charge is without merit as the indictment and grand jury's transcript of proceedings are contained within the record.

Moore-Baker further asserts that his guilty plea was not made knowingly and voluntarily and is thus invalid. Specifically, he charges that he pled guilty under the false impression that he was eligible to receive an enhanced penalty under KRS 532.030. As he now believes he was misinformed about the law, he contends his guilty plea was not made knowingly. We disagree. As stated earlier in this opinion, Moore-Baker was eligible under KRS 532.025 for the enhanced punishment of life without parole for 25 years. He therefore was not acting under a misconception of the law when he pled guilty. Moreover, Moore-Baker signed a Motion to Enter Guilty Plea reflecting that his plea was made knowingly and voluntarily. As such, we are of the

opinion that Moore-Baker's guilty plea was, indeed, made knowingly and voluntarily.

Last, Moore-Baker maintains that he was denied effective assistance of counsel as provided by the Sixth Amendment to the United States Constitution. He argues that his counsel failed to inform him that the indictment was void and that he was not eligible for the sentence of life without parole for 25 years. Thus, he concludes that his counsel was ineffective. We disagree. The aforesaid arguments were held herein to be without merit. Hence, Moore-Baker has failed to prove that his trial counsel was ineffective. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985).

In sum, we perceive no error by the circuit court in denying Moore-Baker's RCr 11.42 motion to vacate judgment.

For the foregoing reasons, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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