

RENDERED: April 30, 1999; 2:00 p.m.
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky
Court Of Appeals**

NO. 1997-CA-002530-MR

JAMES A. DOYLE

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE RON DANIELS, JUDGE
INDICTMENT NO. 92-CR-00067

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: HUDDLESTON, MCANULTY and SCHRODER, Judges.

HUDDLESTON, Judge. James A. Doyle appeals from an order denying an evidentiary hearing on his Ky. R. Crim. Proc. (RCr) 11.42 motion to vacate his 20-year sentence. We affirm.

In March 1992, Doyle was indicted on charges of first-degree robbery, in violation of Ky. Rev. Stat. (KRS) 515.020, and with the status offense of being a first-degree persistent felony offender, pursuant to KRS 532.080. On July 2, 1992, Doyle entered a guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed.2d 162 (1970), to both charges. Under a plea

agreement, the Commonwealth recommended a sentence of 20 years' imprisonment. On July 31, 1992, the circuit court sentenced Doyle in accordance with the Commonwealth's recommendation.

On May 19, 1997, Doyle, acting pro se, filed a RCr 11.42 motion to vacate his conviction asserting that he had received ineffective assistance of counsel in that: (1) his counsel failed to inform the court that one of the prosecutors had represented him in a juvenile proceeding several years prior to his indictment; (2) his counsel failed to investigate Doyle's claim that he was intoxicated when he committed the robbery with which he was charged; and (3) counsel failed to disclose Doyle's disabling mental condition to the court. Had counsel done these things, he says, it is likely he would have received a lighter sentence.

On September 26, 1997, after the Commonwealth had responded to Doyle's motion, the circuit court determined that it was unnecessary to conduct an evidentiary hearing and that Doyle's motion should be denied. The court, citing RCr 11.42(10), determined that Doyle's motion was filed too late, that it was barred by laches, and that, in any event, Doyle received adequate and effective assistance of counsel. This appeal followed.

We do not agree that Doyle's motion was barred by the three-year limitation period fixed by RCr 11.42(10). While the rule provides that a motion to vacate a sentence under RCr 11.42 must, with certain exceptions, be filed within three years after a judgment becomes final, it goes on to provide that "[i]f the

judgment becomes final before the effective date of this rule [RCr 11.42(10)], the time for filing the motion shall commence upon the effective date of this rule." The judgment in Doyle's case was entered on July 31, 1992. RCr 11.42(10) became effective on October 1, 1994, and that was the date on which the three-year limitation period for filing a motion to vacate Doyle's sentence under RCr 11.42 commenced to run. Doyle filed his RCr 11.42 motion on May 19, 1997, well within the three-year limitation period imposed by RCr 11.42(10). The motion was, therefore, timely filed.

Neither do we agree with the circuit court that the motion is barred by laches. RCr 11.42(10) authorizes the Commonwealth to rely on the equitable defense of laches "to bar a [RCr 11.42] motion upon the ground of unreasonable delay in filing when the delay has prejudiced the Commonwealth's opportunity to present relevant evidence to contradict or impeach the movant's evidence." While the Commonwealth did assert the affirmative defense of "the doctrine of laches," it did so on the ground that "[t]he facts which serve as the basis for Movant's Motion have been known to him or should reasonably have been discovered by him prior to this date." The Commonwealth did not allege that the delay in filing the motion prejudiced its opportunity to present evidence to contradict Doyle's evidence, nor did it offer any evidence by affidavit or otherwise to establish that fact. As a result, the court erred in holding that Doyle's motion was barred by laches. We thus turn to the merits of Doyle's motion.

Where a trial court denies a motion for an evidentiary hearing on the merits of allegations raised in a RCr 11.42 motion, our review is limited to whether the motion "on its face states grounds that are not conclusively refuted by the record and which, if true, would invalidate the conviction." Lewis v. Commonwealth, Ky., 411 S.W.2d 321, 322 (1967). If the movant's allegations are refuted on the face of the record as a whole, no evidentiary hearing is required. Hopewell v. Commonwealth, Ky. App., 687 S.W.2d 153, 154 (1985).

Doyle does not contend that but for errors of counsel, he would not have pleaded guilty. Instead, he contends that had counsel brought the matters mentioned above to the attention of the court he would likely have received a lighter sentence. Sentencing guidelines for persistent felony offenders in the first degree are contained in KRS 532.080, which fixes a mandatory minimum sentence of 20 years and a maximum sentence of life imprisonment where a defendant is adjudged guilty of either a class A or a class B felony and of being a first-degree persistent felony offender. Doyle pleaded guilty to Robbery in the First Degree, a class B felony, and to being a Persistent Felony Offender in the First Degree. He received the minimum term of imprisonment that the court was authorized to impose -- 20 years. Thus, his argument that had his counsel brought certain matters to the court's attention the court might have imposed a lighter sentence is

without merit. Doyle does not contend that he would not have pleaded guilty had his counsel rendered effective assistance.

The order denying Doyle's RCr 11.42 motion to vacate his sentence is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Elizabeth Shaw
Richmond, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler III
Attorney General of Kentucky

Perry T. Ryan
Assistant Attorney General
Frankfort, Kentucky