

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001474-MR

RICKY EUGENE MURRAY

APPELLANT

v. APPEAL FROM ADAIR CIRCUIT COURT
HONORABLE PAUL BARRY JONES, JUDGE
ACTION NO. 96-CR-0106

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE, KNOX AND McANULTY, JUDGES.

McANULTY, JUDGE: This is a pro se appeal from an order denying a motion for relief pursuant to RCr 11.42. We find no error in the trial court's decision and therefore affirm.

Appellant was charged with various counts of Stalking First Degree and Burglary First Degree as a result of his conduct towards his wife while their divorce was pending. On June 3, 1997, Appellant entered a guilty plea to one count of Burglary Second Degree. Accordingly, on June 24, 1997 he was sentenced to serve ten years.

Appellant's main argument on appeal is that he received ineffective assistance of counsel in that his attorney pressured

him into pleading guilty to an offense which he could not have committed. For this proposition, Appellant relies on Hayes v. Commonwealth, 171 Ky. 291, 188 S.W. 415 (1916) which he believes indicates that a person cannot burglarize a building he owns. However, in much more recent cases, the Kentucky Supreme Court has held that a person who enters the dwelling of his estranged wife with the intent to commit a crime is guilty of burglary. McCarthy v. Commonwealth, Ky., 867 S.W.2d 469 (1994); Matthews v. Commonwealth, Ky., 709 S.W.2d 414, 423 (1985), cert. denied, 479 U.S. 871, 107 S. Ct. 245, 93 L. Ed. 2d 170 (1986).

In this case, Appellant broke into the home of his estranged wife and was found waiting for her with a butcher knife. Appellant's argument therefore has no merit as it is based on his erroneous perception of the law.

Appellant also asserts ineffective assistance in that his counsel failed to object to a plea hearing conducted in the defendant's absence. As the trial court concluded, the record clearly reflects that Appellant was present and participated in the entry of his guilty plea. We find no error.

Finally, Appellant asserts that the trial court abused its discretion in not allowing him to file an amended 11.42 motion. The trial court entered an order denying Appellant's 11.42 motion on May 1, 1998. Appellant then filed a motion to alter, amend or vacate that order on May 14, 1998. On June 2, 1998, the trial court issued an order denying the motion to alter or amend. On this same day, Appellant filed a motion for leave to file an amended 11.42 motion and the court denied this request

as moot, in light of the fact that it had already ruled on the motion to alter or amend. We find no error in the trial court's decision, especially considering Appellant's statement that the amended motion "reiterated all consistent and pertinent allegations of the original RCr 11.42 motion."

The decision of the Adair Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ricky Eugene Murray, pro se
Central City, KY

BRIEF FOR APPELLEE:

Joseph R. Johnson
Frankfort, KY