

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000458-MR

STEVEN JOHNSON

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JAMES R. DANIELS, JUDGE
ACTION NO. 94-CR-00423

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, MCANULTY, and TACKETT, Judges.

BUCKINGHAM, JUDGE. Steven Johnson appeals from an order of the Warren Circuit Court denying his RCr¹ 11.42 motion to vacate or set aside his conviction and life sentence. Johnson claims that he was entitled to RCr 11.42 relief because all circuit court proceedings were void due to an invalid transfer of his case from the district court to the circuit court. Because the trial court properly denied Johnson relief, we affirm.

Two car jacking incidents in McCracken County in January 1995 resulted in an indictment against Johnson and four other individuals. The charges against Johnson were initially

¹ Kentucky Rules of Criminal Procedure

brought in the juvenile division of the McCracken District Court because Johnson was sixteen years old when the offenses were committed. A public defender attorney was appointed to represent Johnson, and two detention hearings and a transfer hearing² were held. Johnson's case was transferred by the McCracken District Court to the McCracken Circuit Court, and he was indicted as an adult and charged with the following offenses: complicity to commit murder, complicity to first-degree robbery, complicity to kidnapping, complicity to theft by unlawful taking or disposition of property over \$300, two counts of attempted murder, two counts of attempted kidnapping, first-degree robbery, and attempted theft by unlawful taking or disposition of property over \$300.

After a change of venue to the Warren Circuit Court, Johnson entered into a plea agreement with the Commonwealth and pled guilty to all charges except those related to theft. On January 13, 1995, a final judgment was entered sentencing Johnson to two life sentences for complicity to murder and complicity to kidnapping; twenty-year sentences for complicity to first-degree robbery, two counts of attempted murder, first-degree robbery, and attempted kidnapping; and a ten-year sentence for another count of attempted kidnapping. After Johnson turned eighteen years of age, he was returned to the circuit court in July 1995 and was sentenced as an adult and remanded to the custody of the Department of Corrections. The final judgment was entered on

² The procedure for transferring the case of a youthful offender from the district court to the circuit court is set forth in Kentucky Revised Statute (KRS) 640.010.

July 26, 1995, and the sentences were ordered to run concurrently.

On July 27, 1998, Johnson filed a motion to vacate or set aside his convictions pursuant to RCr 11.42. On August 24, 1998, the trial court entered an order appointing a public defender attorney to represent Johnson and giving counsel until October 23, 1998, to file a memorandum in support of Johnson's motion. On November 2, 1998, the trial court entered an order giving counsel an additional thirty days "in which to file a supplement." On November 23, 1998, a supplemental RCr 11.42 motion was filed by Johnson's counsel. On January 29, 1999, the trial court entered an order denying Johnson's motion without an evidentiary hearing. This appeal followed.

Johnson argues in this appeal that the circuit court lacked jurisdiction in his case and that his convictions were void because the transfer order from the McCracken District Court was invalid due to the denial of his right to conflict-free counsel. However, before he pled guilty in 1995, Johnson raised this same defense by written motion to dismiss the indictment due to the alleged conflict of interest on the part of the attorneys from the McCracken County public defender's office who had represented him in the district court proceedings. Although it appears that the trial court never ruled on this motion, Johnson subsequently entered guilty pleas to the charges. He is thus barred from now raising the defense because a guilty plea waives all defenses other than that the indictment charges no offense. Centers v. Commonwealth, Ky. App., 799 S.W.2d 51, 55 (1990).

The facts in the case sub judice are similar to those in Holt v. Commonwealth, Ky., 525 S.W.2d 660 (1975). Holt was a juvenile whose case was transferred to the circuit court so that he could be tried as an adult on charges of willful murder and armed robbery. Holt sought to challenge the transfer order by seeking to quash the indictment in the circuit court. When his requests for relief were denied, he pled guilty in the circuit court to charges of voluntary manslaughter and armed robbery. Holt later sought post-conviction relief under RCr 11.42 on the same ground. The Holt court upheld the trial court's denial of Holt's RCr 11.42 motion and held that he had already litigated the alleged error and could not then be heard again by way of an RCr 11.42 motion. Id. at 661.

Similarly, in Schooley v. Commonwealth, Ky. App., 556 S.W.2d 912 (1977), the appellant sought to use RCr 11.42 to vacate sentences he had received in circuit court for crimes he had committed when he was a juvenile. Schooley argued in his motion that there was no valid transfer order and that the circuit court never acquired jurisdiction over the charges against him. The Schooley court affirmed the trial court's denial of Schooley's motion, holding that he had an opportunity to challenge the validity of the transfer order by direct appeal or by his earlier RCr 11.42 motion. Id. at 918. More importantly, in rejecting Schooley's argument that the circuit court lacked jurisdiction, the court held that "[w]hen the trial court has general subject matter jurisdiction, an erroneous finding of the existence of a jurisdictional fact necessary to

the court's jurisdiction in the particular case does not necessarily render the judgment subject to collateral attack." Id. at 917. The court also held that the issue of jurisdiction could be raised at any time if a transfer order was invalid on its face, but that there could be a waiver under certain circumstances by failure to appeal if the issue was considered as a question of due process. Id. at 916-17.

The case of Commonwealth v. Ivey, Ky., 599 S.W.2d 456 (1980), is also similar to the case sub judice. Ivey moved the court pursuant to RCr 11.42 to vacate his conviction on the grounds that he was improperly transferred from the juvenile court to the circuit court and that the circuit court was without jurisdiction to try him because the prosecution was in violation of the Interstate Agreement on Detainers. The court noted that Ivey had presented the transfer issue to the trial court in a motion to dismiss prior to his trial. Citing Holt, supra, the court held that Ivey could not raise the issue because he had litigated it previously. Id. at 458.

We hold that Johnson may not now be heard on the issue of the validity of the transfer order because he raised the issue prior to his guilty pleas. The Commonwealth has argued that the trial court's order should be affirmed for several other reasons, including that both the motion and supplement were filed outside the three-year time limit set forth in RCr 11.42(10), that the supplemental motion wherein this argument was raised was not verified as required by RCr 11.42(2) and Bowling v. Commonwealth, Ky., 981 S.W.2d 545, 548 (1998), that Johnson's counsel in the

district court did not have a sufficient conflict so as to merit disqualification, and that Johnson has failed to show how he has been prejudiced by the district court proceedings. While some of these arguments may have merit, we decline to address them because the trial court's order should clearly be affirmed for other reasons stated herein.

The order of the Warren Circuit Court is affirmed.

ALL CONCUR.

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