

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000855-MR

URIAH JOSEPH PRICE, III

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS G. PAISLEY, JUDGE
ACTION NO. 98-CR-00618

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: HUDDLESTON, McANULTY AND MILLER, JUDGES.

McANULTY, JUDGE: This is an appeal by Uriah Joseph Price, III, (hereinafter appellant) of his conviction for one count of assault in the second degree pursuant to a guilty plea. On appeal, appellant raises several issues for relief, all of which pertain to the trial court's denial of appellant's request for funds to employ an independent mental health expert. We conclude that appellant did not preserve this issue for appeal and so we affirm appellant's conviction.

The procedural history of the case is as follows:

Appellant was indicted on June 15, 1998, for one count of assault in the first degree. Appellant's family employed private counsel

for his defense. On July 8, 1999, appellant filed a motion for funds to employ an independent mental health expert to assist in investigation and preparation for trial. The motion asserted that although appellant's family had retained private counsel, appellant was an indigent person who lacked funds to provide payment for a mental health expert. The court held that, having hired private counsel, appellant was not eligible for public funds for an expert.

The trial court set an evidentiary hearing on the question of appellant's competence to stand trial. The court ordered a psychological evaluation, which was conducted by Dr. Harwell F. Smith, Ph.D., a clinical psychologist. Dr. Smith concluded that appellant was marginally competent to stand trial and recommended that appellant be examined and treated at the Kentucky Correctional Psychiatric Center (KCPC). The trial court then ordered appellant to KCPC for evaluation of competence to stand trial and capacity at the time of the offense. On December 14, 1998, the report from KCPC was filed with the court. Dr. Victoria Yunker, M.D. stated that appellant was treated with medication and evaluated by the staff of KCPC. She determined that appellant understood the functioning of the court and was competent to stand trial. She further concluded that at the time of the offense appellant did not as a result of a mental disease or defect lack the substantial capacity to conform his conduct to the requirements of law.

Following the receipt of the evaluation from KCPC, appellant's counsel, on December 11, 1998, asserted that

appellant still wanted a mental health expert to assist in his defense. He asked to be allowed to withdraw from the case so that he could refund a portion of his fee to appellant's family so appellant could hire a mental health expert. The trial court allowed defense counsel to withdraw and appointed the public defender to represent appellant. Appellant's new counsel requested time to review appellant's case. On January 8, 1999, appellant's counsel requested a trial date. On March 2, 1999, appellant entered a guilty plea to an amended charge of assault in the second degree. The trial court denied probation and sentenced appellant to ten-years imprisonment in accordance with the recommendation of the Commonwealth; this appeal follows.

On appeal, appellant first argues that the trial court erred in denying his motion for funds to employ a mental health expert to assist in his defense. He next claims that the mental health evaluations performed were not competent. Finally, he contends that a sentence of probation would have been appropriate, but he was not able to present mitigating information to the court about his mental status because he lacked an independent mental health evaluation. We find, however, that appellant did not properly assert or preserve these grounds as claims of error.

The trial court denied appellant's motion on the ground that he had sufficient funds to hire private counsel. Thereafter, when his counsel withdrew, his public defender did not renew the motion. The court was never informed thereafter that appellant did not have the wherewithal to hire an expert.

Moreover, appellant did not challenge the evaluations which were performed or the denial of probation. Most importantly, when accepting the Commonwealth's offer on a plea of guilty, appellant did not preserve any claim of error by a conditional guilty plea pursuant to RCr 8.09. Appellant appeared to be desirous of taking the Commonwealth's offer, not of hiring an expert and going forward with a trial. The claims of error are unpreserved for appellate review. Todd v. Commonwealth, Ky., 716 S.W.2d 242 (1986).

For the foregoing reasons, we affirm appellant's conviction for assault in the second degree.

HUDDLESTON, JUDGE, CONCURS.

MILLER, JUDGE, CONCURS IN RESULT ONLY.

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