

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000412-MR

EDWIN LEE MORAN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 96-CR-00088

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: McANULTY, MILLER, AND TACKETT, JUDGES.

MILLER, JUDGE: Edwin Lee Moran brings this appeal from a February 20, 2001 order of the Fayette Circuit Court. We affirm.

On August 22, 1995, Moran was indicted by the Fayette County Grand Jury, Indictment No. 95-CR-725, with seven counts of theft by deception over \$300.00 (Kentucky Revised Statutes (KRS) 514.040), thirteen counts of theft by deception under \$300.00 (KRS 514.040), and being a first-degree persistent felon (KRS 532.080). Pursuant to a plea agreement, Moran pled guilty to one count of theft by deception over \$300.00, and being a second-degree persistent felon. The remaining charges were dismissed. Additionally, the Commonwealth agreed that if charges relating to

the bad checks written during this time later arose, those charges would likewise be dismissed. On October 17, 1995, he was sentenced to one year, enhanced to ten years, and probated five years.

On January 30, 1996, Moran was again indicted by the Fayette County Grand Jury, Indictment No. 96-CR-088, charging him with five counts of criminal possession of a forged instrument in the second-degree (KRS 516.060), operating a motor vehicle on a suspended license (KRS 186.620(2)), operating a motor vehicle with an expired plate (KRS 186.020), ten counts of misdemeanor theft by deception (KRS 514.040), and being a first-degree persistent felon (KRS 532.080). Again, pursuant to a plea agreement, Moran pled guilty on March 22, 1996 to criminal possession of a forged instrument in the second-degree, and being a first-degree persistent felon. All other charges were dismissed. Moran's parole was revoked, and he was sentenced to five years, enhanced to ten years.

On October 23, 1998, Moran filed Ky. R. Crim. P. (RCr) 11.42 motion to vacate his conviction under Indictment No. 95-CR-725. Moran claimed his plea agreement in said indictment had been breached because charges relating to those in Indictment No. 95-CR-725 appeared in Indictment No. 96-CR-088. Even though the charges in Indictment No. 96-CR-088 relating to Indictment No. 95-CR-725 were dismissed under the plea agreement, Moran insists the Commonwealth used the charges as "leverage" to extract a guilty plea in Indictment No. 96-CR-088. The circuit court denied the motion May 23, 2000, finding the plea agreement was

not breached. This Court affirmed, in Opinion No. 2000-CA-001415-MR, rendered April 6, 2001, holding Moran's allegations of improper leverage "completely unsubstantiated."

On November 3, 1999, Moran filed a pro se RCr 11.42 motion to vacate his sentence under Indictment 96-CR-088. Moran also requested an evidentiary hearing. Counsel was appointed and filed a supplemental memorandum of law in support of Moran's motion. The circuit court denied RCr 11.42 relief without an evidentiary hearing on February 20, 2001. This appeal followed.

Moran contends the circuit court erred in denying his motion to vacate his sentence based upon its finding that Moran's plea was voluntarily entered. Specifically, Moran asserts the Commonwealth included charges in Indictment 96-CR-088 that should have been barred by the plea agreement in 95-CR-725, using them as "leverage" to extract a guilty plea from him in 96-CR-088. We believe Moran is collaterally estopped from presenting this issue. Collateral estoppel is a part of the concept of *res judicata* and serves to prevent parties from litigating issues determined in a prior proceeding. See Gregory v. Commonwealth, Ky., 610 S.W.2d 598 (1980). This Court addressed the identical issue presented herein in Appeal No. 2000-CA-001415-MR. Therein, we held that Moran's claim that the Commonwealth used the charges barred by 95-CR-725 as "leverage" to obtain the guilty plea in 96-CR-088 was "completely unsubstantiated." As such, we cannot say the circuit court erred in denying Moran's RCr 11.42 motion.

Moran also maintains the circuit court erred by denying his RCr 11.42 motion without a hearing. Having determined

Moran's plea was voluntary, the circuit court was not required to hold an evidentiary hearing.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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