

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001204-MR
AND
NO. 2001-CA-001205-MR

RICHARD CAUDILL

APPELLANT

v. APPEALS FROM ROCKCASTLE CIRCUIT COURT
HONORABLE DANIEL J. VENTORS, JUDGE
ACTION NOS. 96-CR-00025 AND 97-CR-00009

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE; JOHNSON AND TACKETT, JUDGES.
JOHNSON, JUDGE: Richard Caudill has appealed from an order entered by the Rockcastle Circuit Court on May 3, 2001, which denied his motion for relief filed pursuant to CR¹ 60.02(e) and (f). Caudill sought to have his convictions for trafficking in a controlled substance (cocaine) in the first degree,² wanton endangerment in the second degree,³ and assault in the fourth

¹Kentucky Rules of Civil Procedure.

²Kentucky Revised Statutes (KRS) 218A.1412.

³KRS 508.070.

degree⁴ vacated because of an alleged defect in the indictments. Having concluded that the indictments were not defective, we affirm.

On November 29, 1995, Caudill was involved in the sale of cocaine to a confidential informant. On April 30, 1996, the Rockcastle County grand jury returned in open court a signed indictment (No. 96-CR-00025) which charged Caudill with one felony count of trafficking in a controlled substance (cocaine) in the first degree. In addition, on December 17, 1996, Caudill was arrested on a warrant issued based on a civil complaint and charged with, inter alia, wanton endangerment in the first degree,⁵ assault in the fourth degree and receiving stolen property.⁶ On February 14, 1997, the Rockcastle County grand jury returned in open court a signed indictment (No. 97-CR-00009) which charged Caudill with wanton endangerment in the first degree, assault in the second degree,⁷ and receiving stolen property.

Pursuant to a plea agreement with the Commonwealth, Caudill entered a guilty plea on February 2, 1998, to trafficking in a controlled substance (cocaine) in the first degree, an amended count of wanton endangerment in the second degree, and an amended count of assault in the fourth degree. Under the plea agreement, in addition to amending the felony offenses of wanton

⁴KRS 508.030.

⁵KRS 508.060.

⁶KRS 514.110.

⁷KRS 508.020.

endangerment and assault to the lesser misdemeanor offenses, the Commonwealth moved to dismiss the count for receiving stolen property and recommended sentences of five years for the conviction for trafficking in a controlled substance (cocaine) in the first degree and probated sentences of 12 months on each of the two misdemeanor convictions of wanton endangerment in the second degree and assault in the fourth degree. On March 27, 1998, the circuit court sentenced Caudill consistent with the Commonwealth's recommendation to five years' imprisonment on trafficking in a controlled substance (cocaine) in the first degree and to two probated 12-month sentences on wanton endangerment in the second degree and assault in the fourth degree.

On April 27, 2001, Caudill filed a CR 60.02 motion for relief challenging his convictions under both indictments based on an alleged defect in the form of the indictments and a claim of ineffective assistance of counsel related to the alleged defective indictments. He requested that the judgment of conviction be vacated and dismissed with prejudice. On May 3, 2001, the circuit court entered an order denying the motion on the merits. This appeal followed.

Caudill argues that both Indictment No. 96-CR-00025 and No. 97-CR-00009 were defective because they did not include an endorsement containing the words "A True Bill." He also asserts that defense counsel rendered ineffective assistance for failing to challenge the indictments based on the alleged defect. Caudill cites several older cases that rely on § 119 of the old Code of Practice in Criminal Cases, which construed that statute

to mandate that an indictment be endorsed with the words "A True Bill."⁸ However, in 1962, the Code of Practice in Criminal Cases was abolished and superceded by the Kentucky Rules of Criminal Procedure (RCr).⁹ The required format for an indictment is now described in Section VI of the Rules of Criminal Procedure and does not contain language similar to § 119 of the old Code of Practice in Criminal Cases. Moreover, RCr 6.12 states: "An indictment, information, complaint or citation shall not be deemed invalid, nor shall the trial, judgment or other proceedings thereon be stayed, arrested or in any manner affected by reason of a defect or imperfection that does not tend to prejudice the substantial rights of the defendant on the merits."

The Rules of Criminal Procedure adopted the principle of notice pleading and relaxed the strict approach applied to the Code of Practice in Criminal Cases.¹⁰ Caudill's reliance on the old law related to the Code of Practice in Criminal Cases is misplaced.¹¹ The indictments involved in this case were not defective and satisfied the requirements of the Rules of Criminal Procedure. Accordingly, defense counsel was not ineffective for

⁸See, e.g., Oliver v. Commonwealth, 95 Ky. 372, 25 S.W. 600 (1894); Terrell v. Commonwealth, 194 Ky. 608, 240 S.W. 81 (1922); Dunn v. Commonwealth, 257 Ky. 702, 79 S.W.2d 12 (1935); and Riley v. Commonwealth, 298 Ky. 687, 183 S.W.2d 958 (1944).

⁹See 1962 Ky. Acts Chap. 234, Preamble, § 60(2), § 61; and Thomas v. Commonwealth, Ky., 931 S.W.2d 446 (1996).

¹⁰Thomas, *supra* at 448; Finch v. Commonwealth, Ky., 419 S.W.2d 146 (1967).

¹¹See, e.g., Russell v. Commonwealth, Ky., 490 S.W.2d 726, 727 (1973) (stating case law dealing with indictments prior to the promulgation of the new Rules of Criminal Procedure is no longer authoritative).

failing to challenge the sufficiency of the indictments. The circuit court did not err in denying Caudill's CR 60.02 motion on the merits.

The order of the Rockcastle Circuit Court is affirmed.

ALL CONCUR.

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