

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001734-MR

JIMMY DALE BOWLIN

APPELLANT

v. APPEAL FROM JESSAMINE CIRCUIT COURT  
HONORABLE J. C. DAUGHERTY, JUDGE  
ACTION NO. 00-CR-00013

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: BARBER, HUDDLESTON, AND MILLER, JUDGES.

MILLER, JUDGE: Jimmy Dale Bowlin brings this *pro se* appeal from an order of the Jessamine Circuit Court entered July 26, 2001 denying him relief under Ky. R. Civ. P. (CR) 60.02. We affirm.

On January 28, 2000, Bowlin was indicted by the Jessamine County Grand Jury on an assortment of offenses. A jury trial was held on October 24, 2000. Bowlin was convicted of three counts of terroristic threatening in the third degree, Kentucky Revised Statutes (KRS) 508.080, two counts of wanton endangerment in the first degree, KRS 508.060, possession of marijuana, KRS 218A.1422, possession of drug paraphernalia, KRS

218A.500, and cruelty to animals in the second degree, KRS 525.130. Bowlin was duly sentenced to prison. On July 26, 2001, he filed a motion pursuant to CR 60.02(e) & (f). The sole claim was that he received ineffective assistance of counsel during his trial.

On July 26, 2001, the Jessamine Circuit Court summarily denied the motion. The court reasoned that the CR 60.02 motion was not a proper procedure for the relief sought. This appeal ensues.

Our standard of review is whether the trial court abused its discretion. See White v. Commonwealth, Ky. App., 32 S.W.3d 83 (2000). The Commonwealth points out that the claim of ineffective assistance of counsel should have been raised by a Ky. R. Crim. P. (RCr) 11.42 proceeding. We think this is well-taken. See Barnett v. Commonwealth, Ky., 979 S.W.2d 98 (1998); Gross v. Commonwealth, Ky., 648 S.W.2d 853 (1983); McQueen v. Commonwealth, Ky., 948 S.W.2d 415 (1997).

Notwithstanding that CR 60.02 was an improper avenue for challenging the effectiveness of trial counsel, the circuit court observed:

Defendant's sole argument is that trial counsel was ineffective due to a failure to investigate the indictment. A review of the record shows that on July 18, 2000, trial counsel filed a Motion to Redact Statements, requesting the Court to redact certain portions of Defendant's taped interview with the police. That pleading, along with the fact that counsel was well-prepared for trial, clearly shows that counsel had investigated the indictment and all relevant aspects of the case and that she practiced the case proficiently.

Having considered the record herein, we perceive no error.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Jimmy Dale Bowlin, *Pro Se*  
Burgin, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General of Kentucky  
Frankfort, Kentucky

Brian T. Judy  
Assistant Attorney General  
Frankfort, Kentucky