

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001479-MR

BOBBY JOE LEDLOW

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 02-CR-00206

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; McANULTY, JUDGE; PAISLEY, SENIOR JUDGE.¹

COMBS, CHIEF JUDGE: Bobby Joe Ledlow appeals from an order of the Calloway Circuit Court entered on May 28, 2004, denying his motion filed pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. We affirm.

On November 25, 2002, Ledlow was indicted on charges of manufacturing methamphetamine in violation of KRS (Kentucky Revised Statutes) 218A.1432; theft by unlawful taking in

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

violation of KRS 514.030; and evading a police officer in violation of KRS 520.095. Represented by counsel, Ledlow negotiated a plea agreement with the Commonwealth in which he pled guilty to each of the charges. In exchange, the Commonwealth recommended the minimum sentences of imprisonment (respectively) of ten years, twelve months, and five years -- to be served concurrently for a total ten-year term.

Before accepting Ledlow's guilty plea, the trial court engaged in a careful and thorough colloquy with him. Ledlow acknowledged that he was indeed guilty of the charged offenses, that he had discussed with his attorney the nature of the crimes and their penalties, and that they had considered any possible defenses that he might have. He then declared that he was pleading guilty freely and voluntarily. On April 14, 2003, Ledlow was sentenced in accordance with the Commonwealth's recommendation.

On May 3, 2004, Ledlow, *pro se*, filed a motion for relief from his conviction. His motion was based upon the decision of the Supreme Court of Kentucky in Kotila v. Commonwealth, 114 S.W.3d 226 (Ky. 2003), cert. denied, 540 U.S. 1198 (2004), holding that in order to sustain a conviction under the provisions of KRS 218A.1432, the Commonwealth had to prove that a defendant was in possession of *all* of the ingredients or *all* of the equipment necessary to manufacture methamphetamine.

Ledlow argued in his motion that he did not possess *all* of the necessary ingredients or *all* of the equipment necessary for manufacture of the drug. Therefore, he was entitled to relief. The trial court denied his motion, and this appeal followed.

Ledlow argues on appeal that his conviction should be vacated since his conduct with respect to the methamphetamine charge did not constitute a crime according to Kotila. We disagree.

Our examination of the record in this case indicates that the Commonwealth had amassed convincing evidence to prove that Ledlow had violated the provisions of KRS 218A.1432. In a handwritten statement provided to police following his arrest, Ledlow admitted that he had been collecting the equipment and ingredients necessary for the manufacture of methamphetamine for several days prior to his arrest in November 2002. He even intimated that he had already begun the manufacturing process. Ledlow's statement provides, in part, as follows:

I went to Wal-Mart in Murray Ky. and stole 24 Lithium Batteries. I had George Tayloe buy a can of Ozark trail camp fluid, he was unaware of the reason I wanted him to purchase it. Since about last Saturday I have been buying pills at various locations they are being used to make meth. I was going to use the pills, batteries, camp fluid, coffee filters, + jugs for the making of methamphetamines, George Tayloe, Brenda ? [sic], + Joshua Harris did not know anything about what I was going to do.

In light of his clear and unequivocal admissions that he was undertaking the manufacture of methamphetamine, we must conclude that Ledlow is not entitled to the extraordinary relief that he seeks. Consequently, the trial court did not err by denying his motion.

The order of the Calloway Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David James Harris
Frankfort, KY

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Jeffrey A. Cross
Assistant Attorney General
Frankfort, KY