

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001247-MR
&
NO. 2006-CA-002074-MR

BLAKE WALKER

APPELLANT

v.

APPEAL FROM ADAIR CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NO. 03-CR-00008

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CAPERTON AND CLAYTON, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Blake Walker pleaded guilty to two counts of murder (KRS 507.020) on July 15, 2003. At the time he shot and killed his parents, he was sixteen (16) years old. Following transfer to circuit court and indictment on the murder charges, the Commonwealth gave notice that it intended to seek the death penalty due to the aggravating circumstances of multiple deaths being involved. Once the trial court denied numerous procedural motions, Walker accepted the Commonwealth's offer to plead guilty to both murder charges in exchange for a recommended sentence of life

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute 21.580.

without the possibility of parole for twenty-five (25) years. He entered his plea and was subsequently sentenced on October 1, 2003. Following the United States Supreme Court's ruling in *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), Walker filed CR 60.02 and RCr 11.42 motions requesting a new sentencing hearing. The trial court denied his motions and his CR 59.05 motion and these appeals followed. We affirm.

When Walker was sixteen years old he shot and killed his mother and father. His case was transferred from juvenile court and he was indicted as an adult. The Commonwealth gave notice that it intended to seek the death penalty. Walker's counsel then filed numerous motions to preclude the death penalty due to his age, as being in violation of the Kentucky and United States Constitution, as being in violation of international law, and as being disproportionate based upon the specific facts of this case. The Commonwealth responded that KRS 532.030(1) and KRS 532.025(2) and (3) authorized the death penalty and several other punishments including life imprisonment, life without parole for twenty-five (25) years, or a term of not less than twenty (20) years nor more than fifty (50) years. The Commonwealth also opposed Walker's other motions. Following a hearing the trial court denied Walker's motions relative to the death penalty. Within weeks of this hearing the Commonwealth made a plea offer to Walker which he accepted. On July 10, 2003, Walker, based on the advice of counsel and following a thorough *Boykin* colloquy, pleaded guilty to two counts of murder. He was formally sentenced on August 26, 2003, to life without the possibility of parole for twenty-five years.

On February 20, 2006, new counsel filed an entry of appearance and a motion to grant new sentencing pursuant to CR 60.02(e) and (f) and RCr 11.42. In his

motion, Walker argued that he was entitled to a new sentencing hearing based upon *Roper. Id.* The trial court denied the motion without a hearing. In its order the court stated: “Blake Walker and the Commonwealth entered into a plea bargain agreement which was accepted by the Court. [Walker] was sentenced pursuant to the plea bargain agreement. There is no basis in law or fact for a new sentencing hearing.” Walker appealed that order and the subsequent order denying his CR 59.05 motion. The court consolidated the appeals by order entered January 12, 2007.

On appeal Walker argues that “[g]iven the facts upon which the *Roper* decision was based, it is no longer equitable for appellant to be held to the bargain he made in 2003 to preclude a death sentence.” He also stated that “as set forth above, however, the holding in *Roper* is broad – it provides a new framework for our understanding of the appropriate penalties for juveniles in light of adolescent brain development and our collective penological interest in punishment. And while it is true that appellant did not receive the sentence of death that the *Roper* court declared to be forbidden under the Eighth and Fourteenth Amendments of the Constitution, appellant nevertheless faced the possibility of a death sentence. See KRS 640.040. To that end, appellant waived several of his Constitutional rights . . . to ensure that the Commonwealth would not recommend the maximum allowable penalty at sentencing – death.”

Walker makes numerous and passionate arguments as to why the trial court erred in denying his motions for a new sentencing hearing. Unfortunately for him, this Court has already addressed his arguments and other similar ones in cases which have already come before this Court based upon the *Roper* decision.² In each of these

² See *Gussler v. Commonwealth*, rendered July 20, 2007; *McStoots v. Commonwealth*, rendered July 27, 2007; *Denton v. Commonwealth*, rendered August 3, 2007; *Sims v. Commonwealth*, rendered September 7, 2007; and *McMillen v. Commonwealth*, rendered November 16, 2007.

cases this Court has affirmed the trial court's denial of defendant's motion for relief based upon *Roper*. This Court has made it clear that a valid plea by a juvenile to any sentence other than the death penalty will NOT be re-opened based upon *Roper*. Likewise, we find no error in the trial court's order denying Walker's CR 60.02 and RCr 11.42 motions.

The orders of the Adair Circuit Court denying Walker's motions for a new sentencing hearing pursuant to CR 60.02 and RCr 11.42 and denying his motion to alter, amend or vacate that order pursuant to CR 59.05, are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Rebecca Hobbs
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Todd D. Ferguson
Assistant Attorney General
Frankfort, Kentucky