

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-002403-MR

KEATH BRAMBLETT

APPELLANT

v.

APPEAL FROM OWEN CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NOS. 00-CR-00023 AND 01-CR-00015

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

DIXON, JUDGE: Keath Bramblett appeals from an order of the Owen Circuit Court denying his motion for post-conviction relief pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42 as untimely. We affirm.

In March 2001, Bramblett confessed to the murder of his former girlfriend, Lawanda Raines, who had disappeared twelve years earlier. After confessing to police, Bramblett led officers to a rural area in Owen County where he had buried Raines's body.

¹ Senior Judge William L. Knopf, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On August 28, 2001, Bramblett entered a guilty plea to charges of murder, tampering with physical evidence, and being a second-degree persistent felony offender. In consideration of his plea, the Commonwealth recommended an aggregate sentence of forty years' imprisonment. On September 25, 2001, the trial court sentenced Bramblett according to the plea agreement.

Bramblett did not pursue a direct appeal, and he did not move for RCr 11.42 relief, through counsel, until September 13, 2006. The trial court summarily dismissed Bramblett's motion as untimely. This appeal followed.

RCr 11.42(10) states:

Any motion under this rule shall be filed within three years after the judgment becomes final, unless the motion alleges and the movant proves either:

(a) that the facts upon which the claim is predicated were unknown to the movant and could not have been ascertained by the exercise of due diligence; or

(b) that the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively.

Here, Bramblett did not file his RCr 11.42 for nearly five years after the judgment became final. Consequently, Bramblett missed the RCr 11.42 filing deadline by nearly two years. On appeal, Bramblett primarily argues he was unaware that he could file an RCr 11.42 post-conviction motion and spent three years following his conviction filing incorrect motions.

A review of the record shows that, in August 2003, Bramblett filed a motion in the trial court seeking "production of all court records." The trial court denied Bramblett's motion. Thereafter, Bramblett filed an original action in this Court seeking a writ of prohibition to prevent the enforcement of his sentence. *Bramblett v. Bates*, 2004-CA-002217 (Jan. 13, 2005). A panel of this Court denied Bramblett's petition, noting he

had “failed to demonstrate any basis” for a writ of prohibition. Then, on March 31, 2005, the Supreme Court denied Bramblett’s motion for leave to file a belated motion for discretionary review.

Despite a two-year delay, Bramblett contends the doctrine of equitable tolling applies to his otherwise time-barred RCr 11.42 motion.

The doctrine of equitable tolling sets forth five factors:

(1) the petitioner's lack of notice of the filing requirement; (2) the petitioner's lack of constructive knowledge of the filing requirement; (3) diligence in pursuing one's rights; (4) absence of prejudice to the respondent; and (5) the petitioner's reasonableness in remaining ignorant of the legal requirement for filing his claim.

Robertson v. Commonwealth, 177 S.W.3d 789, 792 (Ky. 2005), quoting *Dunlap v. United States*, 250 F. 3d 1001, 1008-09 (6th Cir. 2001).

In *Robertson*, the Court considered the doctrine of equitable tolling where an incarcerated *pro se* movant missed the RCr 11.42 filing deadline by fourteen days because of delays within the prison mail system. *Id.* at 790. The Court focused on the diligence of an incarcerated movant to deliver a timely RCr 11.42 motion to the prison mail clerk. *Id.*

Robertson is factually distinguishable from the case at bar. Here, Bramblett does not allege his motion was ready to be filed before the three-year deadline. Rather, Bramblett asserts he was wholly unaware of the rules affording post-conviction relief. He opines that he first learned RCr 11.42 relief was available when he hired an attorney nearly five years after his conviction.

Bramblett relies on the factors enumerated by the Sixth Circuit Court of Appeals in *Dunlap*, arguing that his ignorance of the legal requirements cures his time-barred motion. We disagree.

We are not persuaded that the *Dunlap* factors balance in Bramblett's favor. We note that *Dunlap* addressed a petitioner's ignorance of the requirement for filing a federal *habeas corpus* petition within the one-year statute of limitations. *Dunlap*, 250 F. 3d at 1004, citing 28 U.S.C. § 2255. In contrast, RCr 11.42 affords a prisoner three years to seek relief. And even that three year deadline, Bramblett missed by almost two years. We are not persuaded that Bramblett's alleged ignorance of the rules was reasonable or that it justified filing his motion two years too late. See *Allen v. Yukins*, 366 F. 3d 396, 403 (6th Cir. 2004) ("ignorance of the law alone is not sufficient to warrant equitable tolling"). Furthermore, the record reveals Bramblett had at least constructive knowledge of post-conviction procedure. In his August 2003 motion, Bramblett acknowledged he was reviewing his case for constitutional issues that would require the trial court to vacate his conviction and sentence. Consequently, we are not persuaded that the doctrine of equitable tolling applies. The trial court properly dismissed Bramblett's motion as untimely.

For the reasons stated herein, the order of Owen Circuit Court is affirmed.

ALL CONCUR.

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