

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000673-MR

STANLEY LAYCOCK

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 97-CR-00179

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON AND STUMBO, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

STUMBO, JUDGE: Stanley Laycock appeals *pro se* from an order of the Campbell Circuit Court denying his motion for RCr 11.42 relief from judgment.

He contends that the circuit court erred in failing to provide appointed counsel, to

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

make proper findings of fact, and to waive time limits as allowed under RCr 11.42 and KRS 419.020. For the reasons stated below, we affirm the order on appeal.

Laycock was indicted by the Campbell County grand jury on May 29, 1997, on one count each of trafficking in a controlled substance within 1,000 yards of a school and with being a persistent felony offender (“PFO”) in the first-degree. Laycock entered a plea of guilty on the trafficking count, whereupon the PFO charge was dismissed. Laycock was sentenced to four years in prison, to be served consecutively with a prior sentence he was already serving.

On January 12, 1999, and March 17, 1999, Laycock filed motions “to alter/amend judgment of sentence.” Both motions were denied. On December 4, 2006, he filed a motion for RCr 11.42 relief, and the Commonwealth responded on January 27, 2007. Laycock argued that he received ineffective assistance of counsel at trial, in that counsel failed to properly investigate his psychological illnesses as a possible defense. The matter proceeded in Campbell Circuit Court, whereupon the court rendered an order on February 6, 2007, denying the relief sought. The court based the order on its determination that Laycock did not file the RCr 11.42 motion within three years of his conviction as required by the Kentucky Rules of Civil Procedure. It further determined that even if the motion had been timely filed, the record revealed that Laycock’s plea of guilty was given knowingly, freely and intelligently. This appeal followed.

Laycock now argues that the circuit court erred in denying his motion for RCr 11.42 relief. While he raises four claims of error, the corpus of his

argument is that the circuit court improperly denied his motion as untimely. The circuit court determined that the three-year period for filing the RCr 11.42 motion began on the date of Laycock's last conviction in 1997. The motion at issue was filed on December 4, 2006. Laycock argues that he is entitled to exercise an exception to the three-year rule based on facts which were unknown to him in 1997. Those facts consist of a 2006 letter from a medical doctor who opined that Laycock suffered from a number of ongoing psychiatric conditions.² Laycock contends that though the medical doctor, Dr. Augustina Baluyot, had been treating him since 1993, he was not fully aware until 2006, that his psychiatric conditions may have presented a defense to the underlying trafficking charge. He further maintains that his trial counsel was aware of his psychiatric conditions but did nothing to investigate them as a possible defense to the trafficking charge, and that this failure is the basis for the claim of ineffective assistance.

We have closely examined Laycock's argument and find no error.

RCr 11.42 (10) states that,

[A]ny 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.

² The letter states that Laycock was diagnosed with schizoaffective disorder, bipolar affective disorder, adult attention deficit disorder, social phobia and general anxiety disorder. Dr. Baluyot stated that Laycock is responding well to medication, has a guarded prognosis and should remain under psychiatric treatment indefinitely.

. . . If the motion qualifies under one of the foregoing exceptions to the three year time limit, the motion shall be filed within three years after the event establishing the exception occurred.

Section (b), i.e., the retroactive application of a fundamental constitutional right, is not applicable to the facts at bar. The question, then, is whether the facts upon which Laycock's claim is predicated - his psychiatric conditions - were unknown to him and could not have been ascertained by the exercise of due diligence. We must answer this question in the negative.

Laycock acknowledges that he was receiving psychiatric care under Dr. Baluyot's supervision as early as 1993. That is to say, the facts were not "unknown to the movant" within three years after the date of judgment. RCr 11.42 (10). It can hardly be said that Laycock was aware of his condition in 1993, but not four years later when he entered a guilty plea. Furthermore, the mere fact that his trial counsel allegedly was aware of his condition is not - by itself - evidence of counsel's ineffective assistance for failing to raise the issue as a defense. Counsel is afforded wide latitude in determining the course of reasonable trial strategy. *Moore v. Commonwealth*, 983 S.W.2d 479 (Ky. 1998). Advising a defendant to plead guilty may be a reasonable trial strategy as it avoids the possibility of conviction and longer sentence. *Beecham v. Commonwealth*, 657 S.W.2d 234, 236-37 (Ky. 1983).

And finally, the letter upon which Laycock relies, and which was appended to his motion for RCr 11.42 relief, was not drafted in 2006, as Laycock

claims. The letter, found at page 55 of the record, is dated September 9, 2003.

Laycock's RCr 11.42 motion was filed on December 4, 2006. As such, even if the three-year period for filing the motion began when Laycock received the letter rather than on the date of his last conviction, he still did not file the motion within the three-year extension as required by RCr 11.42 (10).

Accordingly, we find no error with the circuit court's summary denial of Laycock's motion. Laycock's remaining issues - the failure to appoint counsel, hold an evidentiary hearing and render additional findings - are moot. We must also note that Laycock briefly raised a habeas corpus argument. This issue was not addressed in his RCr 11.42 motion, and since it was neither raised nor addressed below, it is not ripe for appellate review. *Grundy v. Commonwealth*, 25 S.W.3d 76, 84 (Ky. 2000).

For the foregoing reasons, we affirm the order of the Campbell Circuit Court denying Laycock's motion for RCr 11.42 relief.

ALL CONCUR.

BRIEF FOR APPELLANT:

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