

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001542-MR

CHRISTOPHER W. LUTTRELL

APPELLANT

v.

APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN LYNN WILSON, JUDGE
ACTION NO. 06-CR-00270

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL, THOMPSON AND VANMETER, JUDGES.

THOMPSON, JUDGE: Christopher W. Luttrell appeals the denial of his CR 60.02 motion to vacate and amend his sentence based upon ineffective assistance of counsel.

On November 14, 2006, Luttrell was indicted for murder, first-degree robbery, kidnapping, theft by unlawful taking and being a persistent felony offender. Pursuant to a plea agreement, Luttrell pled guilty but mentally ill to the

charges. On August 25, 2008, he was sentenced to life without possibility of parole on the murder charge, fifty years on the robbery and kidnapping charges and ten years on the theft charges.

On October 10, 2008, Luttrell filed an RCr 11.42 motion raising numerous claims of ineffective assistance of counsel. One of these claims was counsel affirmatively misadvised him to accept the plea agreement to avoid the death penalty after the trial court ruled Luttrell to be seriously mentally retarded and, therefore, ineligible for the death penalty under KRS 532.140.

The circuit court appointed counsel to represent Luttrell and held an evidentiary hearing. Luttrell's two trial attorneys testified they fully explained to Luttrell the purpose of the KRS 532.140 hearing. One attorney testified he explained the trial court's ruling on this matter to Luttrell. Both attorneys denied telling Luttrell he should accept the Commonwealth's plea agreement in order to avoid the death penalty. Counsel also testified Luttrell was eager to move out of the county jail and the plea of guilty but mentally ill was important to Luttrell because he was not guaranteed a jury that found him guilty would also find him mentally ill. Luttrell continued to maintain he was affirmatively misadvised and would have rejected the plea agreement and proceeded to trial had he received correct advice.

The circuit court found the attorneys' statements credible and determined no ineffective assistance of counsel occurred. Luttrell appealed but later filed a motion to dismiss the appeal, which this Court granted.

On February 17, 2012, Luttrell filed a CR 60.02 motion requesting his sentence be vacated and amended based upon numerous claims of error, including an identical claim of ineffective assistance of counsel for affirmatively misadvising him to plead guilty to avoid the death penalty. The circuit court denied Luttrell's motion. Luttrell appeals solely on the ineffective assistance of counsel claim.

On appeal, we review the denial of a motion pursuant to CR 60.02 for abuse of discretion. *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996). "The structure provided in Kentucky for attacking the final judgment of a trial court in a criminal case is not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals, in RCr 11.42, and *thereafter* in CR 60.02." *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983).

Final disposition of [an RCr 11.42] motion, or waiver of the opportunity to make it, shall conclude all issues that reasonably could have been presented in that proceeding. The language of RCr 11.42 forecloses the defendant from raising any questions under CR 60.02 which are "issues that could reasonably have been presented" by RCr 11.42 proceedings.

Id. at 857. Luttrell not only had the opportunity to raise this issue in his previous RCr 11.42 motion, but did not raise this issue at that time. This ineffective assistance of counsel claim was finally determined when the appeal was dismissed. Luttrell is now barred from raising this same issue again.

Accordingly, we affirm the Henderson Circuit Court's denial of Luttrell's CR 60.02 motion.

BRIEF FOR APPELLANT:

Christopher Luttrell, *pro se*
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

J. Hays Lawson
Assistant Attorney General
Frankfort, Kentucky