

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000187-MR

WESLEY S. ANGLIN

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 07-CR-00157

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

ACREE, JUDGE: Wesley S. Anglin appeals the Hardin Circuit Court's December 19, 2016 order denying his motion for relief pursuant to CR¹ 60.02 on grounds that his conviction violates the prohibition of double jeopardy because the district court case which preceded the underlying felony indictment was expunged. We affirm.

¹ Kentucky Rules of Civil Procedure.

On November 20, 2006, Anglin was arrested and charged with complicity to first-degree burglary, a Class B felony,² and receiving stolen property. The matter originated in the Hardin District Court and was assigned case No. 06-F-01015.

At the preliminary hearing on January 29, 2007 in that case, the Hardin District Court noted on the docket sheet “DWOP on MCA.” In the shorthand employed in the district court, this means “dismissed without prejudice on motion of the Commonwealth Attorney.” The district court also noted that a “direct indictment [was] expected.”

The grand jury returned a direct felony indictment, No. 07-CR-00157, against Anglin on March 29, 2007, charging him with complicity to first-degree burglary. In December 2007, Anglin pleaded guilty to that charge. The circuit court sentenced him to thirteen years’ imprisonment, probated for five years.

The circuit court revoked Anglin’s probation on May 29, 2009. Two years later, Anglin challenged his probation revocation by filing a motion pursuant to CR 60.02. This Court affirmed the order revoking his probation. *Anglin v. Commonwealth*, 2011-CA-001253-MR, 2013 WL 1003500, at *1 (Ky. App. Mar. 15, 2013).

² Kentucky Revised Statutes (KRS) 511.020.

Anglin next filed a motion to vacate the final judgment and sentence pursuant to RCr³ 11.42, arguing that he received ineffective assistance of counsel during the plea negotiations. The circuit court denied his motion, and this Court again affirmed. *Anglin v. Commonwealth*, 2013-CA-000570-MR, 2015 WL 1304191, at *1 (Ky. App. Mar. 20, 2015).

On June 25, 2014, Anglin filed a motion for expungement of case No. 06-F-01015. He alleged the district court entered an order expunging case No. 06-F-01015 on July 16, 2014. On that order the district court supposedly wrote that the district court case was dismissed with prejudice on January 29, 2008. According to the circuit court, there is no notation on the court jacket showing that the case was, in fact, dismissed with prejudice, nor is there anything to indicate as much in the district court case file.

On November 7, 2016, Anglin filed a CR 60.02(e)⁴ motion seeking to vacate his criminal conviction on grounds that it violated prohibitions against double jeopardy. He argued that, in 2014, he filed a motion to expunge the record in case No. 06-F-01015, which the district court granted. Accordingly, Anglin

³ Kentucky Rules of Criminal Procedure.

⁴ CR 60.02 provides, in relevant part: “On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: . . . (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application[.]”

argued, because the district court case was expunged, suggesting it was dismissed with prejudice, the subsequent felony indictment offended double jeopardy. The circuit court denied his motion. It reasoned:

The problem is that there is no record of any dismissal of [No. 06-F-01015] with prejudice. When Anglin filed an expungement petition with the Hardin District Court in 2014, the court made a notation only in the expungement order of a change in the nature of the dismissal to be with prejudice dated 1-29-2008, exactly one year after the dismissal without prejudice. No document or any other entry in the actual record supports this curious notation.

Under more recent law (effective in 2016), an “F” case that does not result in an indictment can be expunged after the passage of one year. KRS 431.076(2). This law did not exist in 2014, when the expungement was filed. The legal and factual basis for the notation made by the district court is a mystery.

Whatever the reason, the action by the district court has no legal effect. Once the indictment was returned in this case, the district court had no authority to adjudicate the felony charge that resulted in the indictment. The district court could not enter any valid order dismissing that charge with prejudice.

(R. 423-24). Anglin appealed.

Anglin argues the trial court abused its discretion in denying his CR 60.02 motion.⁵ He asserts, as he did before the circuit court: (1) that the events giving rise to the indictment in this case were originally charged in district court

⁵ The denial of a CR 60.02 motion is reviewed by this Court under an abuse of discretion standard. *Foley v. Commonwealth*, 425 S.W.3d 880, 886 (Ky. 2014).

case No. 06-F-01015; (2) that the district court expunged case No. 06-F-01015 in 2014; and (3) only a case dismissed *with* prejudice can be expunged under KRS 431.076. Because case No. 06-F-01015 was dismissed with prejudice, Anglin argues, the subsequent felony indictment against him arising from the same course of events violates double jeopardy. His reasoning is fundamentally flawed.

The double jeopardy clauses of the United States and Kentucky constitutions provide that a person may not be placed in jeopardy twice for the same crime. *See* U.S. CONST. amend. V; KY. CONST. § 13. To further protect against double jeopardy, KRS 505.030 provides, in relevant part:

When a prosecution is for a violation of the same statutory provision and is based upon the same facts as a former prosecution, it is barred by the former prosecution under the following circumstances: . . . (3) The former prosecution was terminated by a final order or judgment, which has not subsequently been set aside, and which required a determination inconsistent with any fact or legal proposition necessary to a conviction in the subsequent prosecution[.]

KRS 505.030(3). Our Supreme Court has held that a final order dismissing a criminal charge or indictment with prejudice results in an adjudication on the merits and may bar subsequent prosecution under our double-jeopardy standard.

Commonwealth v. Hicks, 869 S.W.2d 35, 38 (Ky. 1994), *overruled on other grounds by Keeling v. Commonwealth*, 381 S.W.3d 248, 259 (Ky. 2012).

However, another statute, KRS 505.060, makes it abundantly clear that KRS

505.030 does not bar further prosecution if the former prosecution “[w]as before a court which lacked jurisdiction over the defendant or the offense.” KRS 505.060(2).

The difficulty with this case lies with the record. This Court does not have access to the district court file, and neither the district court’s expungement order or order dismissing with prejudice nor Anglin’s expungement petition is contained in the record on appeal. We pause to reiterate it is Anglin’s responsibility to present this Court with a complete record on appeal. *Chestnut v. Commonwealth*, 250 S.W.3d 288, 303 (Ky. 2008). As said by our Supreme Court, we are “not in the business of making baseless presumptions.” *Id.* When the record is incomplete, we must assume that the omitted record supports the trial court’s decision. *Id.*; *Hatfield v. Commonwealth*, 250 S.W.3d 590, 600-01 (Ky. 2008). With that said, we will take as true, solely for purposes of this appeal, the parties’ assertions that the expungement order states the district court dismissed case No. 06-F-01015 with prejudice in January 2008.

That order, however, is in direct conflict with the district court’s prior notation on the docket sheet, which was entered into the district court record and made part of this record on appeal, that case No. 06-F-01015 was dismissed without prejudice in January 2007. It is impossible for this Court to reconcile this discrepancy. But resolution of this case does not require us to do so, for the district

court clearly lacked authority to enter a final resolution in case No. 06-F-01015. If, in fact, the district court dismissed case No. 06-F-01015 in January 2008 with (or without) prejudice, if at all, that order is void because it was entered by a court lacking subject matter jurisdiction.

It is “fundamental that a court must have jurisdiction before it has authority to decide a case.” *Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky.2005). The Kentucky Constitution states, “[t]he district court shall be a court of limited jurisdiction and shall exercise original jurisdiction as may be provided by the General Assembly.” KY. CONST. § 113(6). To facilitate § 113’s mandates, our General Assembly enacted KRS 24A.110, which provides in relevant part:

(1) The District Court shall have exclusive jurisdiction to make final disposition of all criminal matters, including violations of county, urban-county, or city ordinances or codes, except:

(a) Offenses denominated by statute as felonies or capital offenses; and

(b) Offenses punishable by death or imprisonment in the penitentiary.

.....

(3) The District Court has, concurrent with Circuit Court, jurisdiction to examine any charge of a public offense denominated as a felony or capital offense or which may be punished by death or imprisonment in the penitentiary and to commit the defendant to jail or hold him to bail or other form of pretrial release.

KRS 24A.110(1), (3). While district courts retain limited subject-matter jurisdiction⁶ in felony cases under KRS 24A.110(3), such as acting as an examining court by conducting a preliminary hearing to determine if probable cause exists to detain a defendant,⁷ district courts cannot make final dispositions as to felony charges. KRS 24A.110(1); *Commonwealth v. Vibbert*, 397 S.W.3d 910, 914 (Ky. App. 2013). Simply put, district courts do not “have *any* jurisdiction to make final dispositions of felony offenses.” *Mills v. Department of Corrections Offender Information Services*, 438 S.W.3d 328, 334 (Ky. 2014). That authority is specifically, and exclusively, reserved to circuit courts. *Id.*; *Waugh v. Commonwealth*, 605 S.W.2d 43, 45 (Ky. App. 1980) (“KRS 24A.110 gives no jurisdiction for final disposition of felony cases to the district courts. Such is reserved to the circuit courts.”).

A dismissal with prejudice is a final disposition. *Gibson v. Commonwealth*, 291 S.W.3d 686, 688 (Ky. 2009); *Shaffer v. Morgan*, 815 S.W.2d

⁶ To be clear, subject-matter jurisdiction refers to the trial court’s authority over a general type of controversy, *i.e.*, the ability to hear this “type” or “kind” of case or “class” of cases. *Commonwealth v. Steadman*, 411 S.W.3d 717, 722 (Ky. 2013); *Shafizadeh v. Shafizadeh*, 444 S.W.3d 437, 443 (Ky. App. 2012); *Hisle v. Lexington-Fayette Urban County Government*, 258 S.W.3d 422 (Ky. App. 2008).

⁷ “Under K.R.S. 24A.110 the district court has jurisdiction to either (1) examine a felony offense and commit the defendant to jail or set bond, or (2) for good cause shown, reduce the charge to a misdemeanor, thereby bringing the case within its jurisdiction for final disposition.” *Commonwealth v. Hamble*, 628 S.W.2d 345, 345 (Ky. App. 1981).

402, 404 (Ky. 1991) (“The term ‘dismissal with prejudice’ is . . . ‘an adjudication on the merits, and final disposition, barring the right to bring or maintain an action on the same claim or cause.’” (citation omitted)). It stands to reason, then, that a district court lacks jurisdiction to enter an order dismissing a felony charge with prejudice, for this would constitute a “final disposition,” of the felony case.

Commonwealth v. Hambleton, 628 S.W.2d 345, 346 (Ky. App. 1981) (“Final disposition of felony cases is expressly excepted from district court jurisdiction.”).

In this case, Hardin District Court clearly lacked jurisdiction to dismiss case No. 06-F-01015. If it indeed did so in January 2008, that order is void *ab initio*. *Vibbert*, 397 S.W.3d at 913 (a judgment entered by a court without subject matter jurisdiction is void); *Hisle v. Lexington-Fayette Urban County Government*, 258 S.W.3d 422, 430 (Ky. App. 2008) (“It is well-established that a judgment entered by a court without subject matter jurisdiction is void.”).

Anglin’s criminal conviction in this case could not, and did not, offend double jeopardy. KRS 505.060(2).

Our Supreme Court’s opinion in *Commonwealth v. Stephenson*, 82 S.W.3d 876 (Ky. 2002), is on point and enlightening. The appellant in *Stephenson*, like Anglin here, argued that the district court’s dismissal of a felony DUI charge barred the Commonwealth from seeking a separate, direct felony indictment of that charge. He also argued double jeopardy barred the felony indictment and further

prosecution in circuit court. Citing KRS 24A.110, the Supreme Court rejected his argument. It found the district court did not have the jurisdiction to make a final adjudication as to the appellant's felony charge. Instead, the district court could only act as an examining court. *Stephenson*, 82 S.W.3d at 887-88. Accordingly, the Supreme Court found the district court's dismissal of the felony DUI offense provided no basis for a double jeopardy claim. *See id.*

Like the district court in *Stephenson*, the Hardin District Court lacked jurisdiction to render a final adjudication of Anglin's felony burglary charge. Its dismissal of the burglary charge, whether with or without prejudice, in no way prevented the Commonwealth from further prosecuting Anglin for that same charge by way a felony indictment in circuit court.

It is unclear why and on what grounds the district court ultimately chose to expunge case No. 06-F-01015, if at all. Again, the expungement order is not contained in the record. KRS 431.076, Kentucky's expungement statute, makes it clear that a court may only expunge records of "[a] person who has been charged with a criminal offense" if one the following is met: (1) the person has been found not guilty of the offense; (2) the charges have been dismissed with prejudice and not in exchange for a guilty plea to another offense; or (3) felony charges originally filed in district court did not result in an indictment by the grand

jury.⁸ KRS 431.076(1). In this case, the felony charge *did* result in an indictment by the grand jury, Anglin pleaded guilty to that charge and, as explained, the district court's alleged order dismissing case No. 06-F-01015 was void *ab initio* for want of jurisdiction. Nothing in KRS 431.076 authorized the district court to expunge case No. 06-F-01015.

We would be remiss if we failed to acknowledge the unique procedural posture and timing of this case. It is without dispute that the district court dismissed case No. 06-F-01015 *without prejudice* in January 2007. The record is clear as to this fact. It is also clear that the grand jury returned an indictment charging Anglin with felony burglary in March 2007. The district court did not dismiss, as alleged, case No. 06-F-01015 with prejudice until January 2008, if it did so at all.

Even if the district court had the authority to enter a final adjudication as to the felony burglary charge in January 2008, which it did not, the felony indictment in March 2007 divested it of jurisdiction at that point and it “could no longer dispose of the felony charge.” *Hamblem*, 628 S.W.2d at 346. That is, “once the indictment issued, the district court no longer had power to make a final

⁸ Interestingly, the portion of KRS 431.076(1) authorizing the trial court to expunge records that did not result in a grand-jury indictment did not take effect until 2016, two years after Anglin filed his expungement motion. 2016 Ky. Acts Ch. 94 (HB 40).

disposition of the case.” *Id.* Neither the district court’s order supposedly dismissing case No. 06-F-01015 with prejudice in January 2008 or its order expunging that case had any effect on this case. Double jeopardy is neither offended nor implicated.

We affirm the Hardin Circuit Court’s December 18, 2016 order denying Anglin’s CR 60.02 motion.

ALL CONCUR.

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