

RENDERED: MARCH 20, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000108-MR

MICHAEL T. FORD

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE GREGORY A. LAY, JUDGE
ACTION NO. 00-CR-00075

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, KRAMER, AND K. THOMPSON JUDGES.

THOMPSON, K. JUDGE: In 2001, Michael Ford pled guilty to two counts each of kidnapping and complicity to murder, and he received four sentences of life without the possibility of parole. He appeals, *pro se*, from an order of the Laurel Circuit Court denying his motion to withdraw his guilty plea pursuant to Kentucky Rules of Criminal Procedure (RCr) 8.10. We affirm.

In 1999, Charles J. Deaton and Dorothy Raynard were kidnapped in Deaton's vehicle and murdered in Laurel County. Ford and three other individuals were indicted for the kidnappings and murders. Specifically, Ford was indicted for two counts of complicity to murder, two counts of complicity to kidnapping, one count of theft by unlawful taking, abuse of a corpse, and for being a first-degree persistent felony offender. The Commonwealth gave notice of its election to proceed with capital punishment. A plea agreement was reached allowing Ford to avoid the death penalty.

On March 26, 2001, Ford appeared in court with counsel and entered his guilty pleas to two counts of complicity to murder and two counts of complicity to kidnapping. He stated he understood he was waiving his rights, including the right to trial, he understood the possible penalties and the Commonwealth's sentencing recommendation and acknowledged the remaining counts would be dismissed. Ford affirmed that he had obtained his G.E.D., that he did not suffer from mental illness, that his plea was voluntarily entered, and no one was forcing him to enter his plea agreement. Ford was sentenced in accordance with agreement on March 26, 2001.

In February 2003, Ford filed an RCr 11.42 motion seeking to vacate the judgment against him alleging ineffective assistance of counsel. While Ford raised a number of claims, the central issue was whether he possessed the requisite

mental competency to enter a valid guilty plea. The trial court held a limited hearing and, on October 31, 2003, the trial court denied Ford's motions for relief on all grounds.

On November 19, 2003, Ford filed a motion “pursuant to CR 60.02(a) requesting that the court re-conduct its October 27, 2003 hearing” and appoint DPA counsel. On December 15, 2003, an order was entered denying the motion. Ford filed a notice of appeal on January 13, 2014 stating he was appealing from an order denying his RCr 11.42 motion entered on December 15, 2003.

This Court held that because the order denying RCr 11.42 relief was entered on October 31, 2003, the notice of appeal was untimely. *Ford v. Commonwealth*, No. 2004-CA-000093-MR, 2005 WL 627149, at *2 (Ky. App. Mar. 18, 2005)(unpublished). This Court further held that even if Ford had properly appealed the Kentucky Rules of Civil Procedure (CR) 60.02 motion, he was not entitled to relief, reasoning as follows:

Finally, Ford would not be entitled to relief even if we treated his pro se notice of appeal as having been intended to apply to the order denying CR 60.02(a) relief. Ford alleged in his CR 60.02 motion that the trial court should have granted his oral request to appoint counsel to represent him during the RCr 11.42 evidentiary hearing which addressed his mental competency to enter a guilty plea. However, RCr 11.42(5) specifically provides that a trial court need not appoint counsel to represent a movant in an RCr 11.42 proceeding unless that movant requests such an appointment by a “specific written request.” Here, such a written request was not made. Further,

since Ford's trial counsel testified and produced evidence to show that the psychological and neuropsychological evaluation conducted before Ford entered his guilty plea did not support a psychological defense, there is nothing to suggest that Ford was prejudiced by the court's failure to appoint counsel to represent him during the RCr 11.42 hearing. Thus, it is clear from the record that there was no "mistake, inadvertence, surprise or excusable neglect" which would entitle Ford to relief herein, and the trial court did not abuse its discretion by denying his motion for CR 60.02 relief.

Id. (footnotes omitted). The Supreme Court denied discretionary review on May 11, 2005.

On October 29, 2018, Ford filed a motion to withdraw his guilty plea pursuant to RCr 8.10. He also requested assistance of counsel. In his motion, Ford alleged that he was misinformed by his trial counsel that he could be sentenced to death if he proceeded to trial. The trial court denied the motion, and this appeal followed.

RCr 8.10 provides that "[a]t any time *before judgment* the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted." (Emphasis added). Ford's motion was filed almost seventeen years *after* his judgment of conviction and sentence were entered and, therefore, any relief would have to be through a post-conviction remedy, not RCr 8.10.

Essentially, Ford argues that he received ineffective assistance of counsel. Ford previously filed an RCr 11.42 motion and a CR 60.02

motion, both of which were decided against him. “Final disposition of [that] motion shall conclude all issues that could reasonably have been presented in the same proceeding.” RCr 11.42(3). Ford’s claim that his counsel misinformed him that he could be subject to the death penalty if he proceeded to trial, could reasonably have been presented in either of his two prior post-conviction proceedings. Also, if Ford’s latest motion is viewed as an RCr 11.42 motion, it was not filed within the time provisions of RCr 11.42(10).

Finally, we note that there is no merit to Ford’s claim that he was misinformed. “Murder is a capital offense.” Kentucky Revised Statutes (KRS) 507.020(2). “In Kentucky one who is found guilty of complicity to a crime occupies the same status as one being guilty of the principal offense.” *Wilson v. Commonwealth*, 601 S.W.2d 280, 286 (Ky. 1980). It was possible that Ford, charged with two counts of complicity to murder, two counts of kidnapping and other offenses including first-degree persistent felony offender, could have been sentenced to death had he proceeded to trial.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Michael T. Ford, pro se
Sandy Hook, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

Joseph A. Beckett
Assistant Attorney General
Frankfort, Kentucky