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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0091-MR

RYAN LLOYD — APPELLANT

v.

APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, SPECIAL JUDGE
ACTION NO. 19-CR-00305

COMMONWEALTH OF KENTUCKY — APPELLEE

AND

NO. 2025-CA-0175-MR

RYAN LLOYD — APPELLANT

v.

APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, SPECIAL JUDGE
ACTION NO. 19-CR-00305

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: EASTON, A. JONES, AND MOYNAHAN, JUDGES.

MOYNAHAN, JUDGE: In these two consolidated appeals from a criminal matter, we are asked to decide whether the Daviess Circuit Court abused its discretion in denying various post-sentencing motions filed by the Appellant, Ryan Lloyd ("Lloyd") in its July 22, 2024, and December 12, 2024, orders. After considering the briefs filed, the relevant law, and the records on appeal, we affirm.

BACKGROUND

On March 5, 2019, Lloyd was indicted under Kentucky Revised Statutes ("KRS") 531.320(2)(b) for fourteen (14) counts of Promoting a Sexual Performance by a Minor (under 16 years old),[1] six (6) counts of Promoting a Sexual Performance by a Minor (under 18 years old) under KRS 531.320(2)(a),

[1] KRS 531.320 states:

> (2) Promoting a sexual performance by a minor is:
>
> (a) A Class C felony if the minor or computer-generated image of a minor involved in the sexual performance is less than eighteen (18) years old at the time the minor or computer-generated image of a minor engages in the prohibited activity;
>
> (b) A Class B felony if the minor or computer-generated image of a minor involved in the sexual performance is less than sixteen (16) years old at the time the minor or computer-generated image of a minor engages in the prohibited activity[.]"

and three (3) counts of Voyeurism under KRS 531.090.[2] The underlying charges were predicated on hidden video cameras that Lloyd had installed in the bathrooms of his home as well as the home of a neighbor. Lloyd retained private counsel for his defense.

Following plea negotiations, Lloyd pled guilty to amended charges of twenty (20) counts of Possession of Matter Portraying a Sexual Performance by a Minor under KRS 531.335,[3] and the three (3) original counts of Voyeurism. The Commonwealth's recommendation was for two sentences of five (5) years each to run consecutively for a total of ten (10) years. As part of the plea agreement, Lloyd acknowledged that he discussed any possible defenses he may have and the terms of the agreement with his counsel, understood the terms of the agreement, and waived his constitutional rights to a trial where he may bring any defense and to appeal. At the April 2, 2021, sentencing hearing, Lloyd's counsel argued for probation and raised concern with the original charges upon which Lloyd was indicted being a part of the pre-sentence investigation report; however, no other

[2] Voyeurism is classified as a Class A misdemeanor. KRS 531.090(4).

[3] KRS 531.335 states that:

> (3) Possession or viewing of matter portraying a sexual performance by a minor is:
>
> > (a) A Class D felony if the person knows that the minor or computer-generated image of a minor portrayed is less than eighteen (18) years old at the time of the sexual performance[.]

objections or requests were made. The circuit court ultimately entered a judgment and sentence accepting the Commonwealth's recommendation and denying Lloyd's request for probation.

Proceeding *pro se*, in March 2024, Lloyd filed a motion for the appointment of counsel and a motion to vacate his judgment pursuant to Kentucky Rule of Criminal Procedure ("RCr") 11.42; specifically, Lloyd challenged the constitutionality of KRS 531.320, the statute on which he was originally charged and indicted, and raised several factual defense arguments. The circuit court denied that motion, and Appeal No. 2025-CA-0175-MR followed.[4]

In October 2024, Lloyd, *pro se*, filed a motion pursuant to KRS 418.040 for a declaratory judgment declaring KRS 531.320 unconstitutional and motions for relief under Kentucky Civil Rule of Procedure ("CR") 60.02(e) and CR 60.03; Appellant raised the same arguments as presented in his original RCr 11.42 motion. The circuit court denied those motions and Appeal No. 2025-CA-0091-MR followed. This Court granted Lloyd's motion to consolidate the appeals and ultimately denied his motion for the appointment of counsel for the purpose of this appeal. KRS 31.110(2)(c).

[4] Appellant filed another notice of appeal from this order (Appeal No. 2025-CA-0219); however, that appeal was dismissed by this Court as duplicative.

STANDARD OF REVIEW

The denial of an RCr 11.42 motion is reviewed for abuse of discretion. *Teague v. Commonwealth*, 428 S.W.3d 630, 633 (Ky. App. 2014). Similarly, the denial of a CR 60.02 or a CR 60.03 motion is also reviewed for an abuse of discretion. *Rogers Group, Inc. v. Masterson*, 175 S.W.3d 630, 636 (Ky. App. 2005) (citations omitted). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Finally, the standard of review on appeal from a declaratory judgment is whether the judgment was clearly erroneous. *American Interinsurance Exchange v. Norton*, 631 S.W.2d 851, 852 (Ky. App. 1982).

ANALYSIS

RCr 11.42(1) provides that a "prisoner in custody under sentence or a defendant on probation, parole or conditional discharge who claims a right to be released on the ground that the sentence is subject to collateral attack may at any time proceed directly by motion in the court that imposed the sentence to vacate, set aside or correct it." "RCr 11.42 encompasses every issue that *suffices as reason* to vacate a judgment *which could not have been addressed by direct appeal.*" *Commonwealth v. Marcum*, 873 S.W.2d 207, 210 (Ky. 1994) (emphasis added); *Thacker v. Commonwealth,* 476 S.W.2d 838, 839 (Ky. 1972); *Smith v.*

Commonwealth, 412 S.W.2d 256, 259 (Ky. 1967). In a RCr 11.42 proceeding, the movant has the burden to establish convincingly that he was deprived of some substantial right which would justify the extraordinary relief afforded by the post-conviction proceeding. *Dorton v. Commonwealth*, 433 S.W.2d 117, 118 (Ky. 1968).

CR 60.02(e), as presented in this case, permits a court to grant relief in circumstances where a judgment is void. CR 60.03 similarly permits a court to grant relief upon "appropriate equitable grounds." Generally, CR 60.02 may be "utilized only in extraordinary situations when relief is not available on direct appeal or under RCr 11.42" and in situations where CR 60.02 relief is unavailable, CR 60.03 relief is likewise not permitted if based upon the same core grounds as the CR 60.02 or RCr 11.42 motions. *See Foley v. Commonwealth*, 425 S.W.3d 880, 884 (Ky. 2014) (citation omitted). "Similarly, KRS 418.040 is not a substitute for direct appeal, RCr 11.42, and/or CR 60.02 proceedings, nor, as here, a device to set the stage for such proceedings." *Foley v. Commonwealth*, 306 S.W.3d 28, 32 (Ky. 2010).

Generally, a "guilty plea constitutes a break in the chain of events, and the defendant therefore may not raise independent claims related to the deprivation of constitutional rights occurring before entry of the guilty plea." *Centers v. Commonwealth*, 799 S.W.2d 51, 55 (Ky. App. 1990); *Tollett v. Henderson*, 411

U.S. 258, 267 (1973). It is also well established that a guilty plea waives all defenses pertaining to questions of fact. *See Taylor v. Commonwealth*, 724 S.W.2d 223, 225 (Ky. App. 1986).

That said, "[a] waiver of the right to appeal in a guilty plea does not extinguish all appealable issues . . . [such as] competency to plead guilty; whether the plea complied with the requirements of *Boykin v. Alabama*, 395 U.S. 238, 244, [(1969)]; subject matter jurisdiction and failure to charge a public offense; and sentencing issues." *Grigsby v. Commonwealth*, 302 S.W.3d 52, 53–54 (Ky. 2010) (citations omitted).

From what this Court can glean from Lloyd's brief, he essentially challenges the voluntariness of his plea of guilty, arguing that KRS 531.320 is unconstitutional for vagueness, and that, because KRS 531.320 is vague, his guilty plea was coerced and therefore his sentence is void. Lloyd notably does not allege ineffective assistance of counsel.

Ultimately, Lloyd's argument fails for multiple reasons. First, Lloyd's constitutional challenge to KRS 531.320 does not constitute a valid collateral challenge afforded under RCr 11.42. Next, Lloyd's guilty plea was not otherwise invalid. And finally, all of Lloyd's factual arguments were effectively waived by his guilty plea. We shall take these points in turn.

In this case, Lloyd challenges the constitutionality of KRS 531.320, the statute under which he was initially indicted; at no point has he contested KRS 531.335, the statute to which he pled guilty and ultimately sentenced.[5] As mentioned above, the right to make a RCr 11.42 motion cannot be waived by a guilty plea; however, the bounds of the arguments brought in a RCr 11.42 motion are not limitless – they must pertain to those issues which could not have been addressed in a direct appeal. Here, Lloyd's argument existed and was available to him long before he entered a guilty plea and was sentenced. Indeed, his alleged error "could have been raised in the circuit court by a motion to dismiss the indictment and it could have been raised upon appeal to this court if properly preserved." *Smith v. Commonwealth*, 412 S.W.2d 256, 259 (Ky. 1967) (citations omitted); *see also* RCr 8.18. As the circuit court and the Commonwealth point out, Lloyd could have sought to enter a conditional guilty plea to contest the statute under which he was indicted. *See* RCr 8.09; *see also*, *e.g.*, *Mattingly v. Commonwealth*, 878 S.W.2d 797, 798 (Ky. App. 1993) *and Tobar v. Commonwealth*, 284 S.W.3d 133, 134 (Ky. 2009). However, he did not.[6] Lloyd could have also raised the issue at trial if he chose not to accept the guilty plea, but

[5] Notably, Lloyd also never challenges the three (3) counts of Voyeurism under which he was initially indicted, pled guilty, and sentenced to twelve (12) months of incarceration.

[6] Lloyd makes the baseless claim that he requested the right to preserve his right to challenge the constitutionality of KRS 531.320, but the Commonwealth refused to accept such a term. From our review of the record, no request was ever made or considered by the circuit court.

he instead chose to enter a guilty plea to crimes which carried a lesser maximum sentence than those under which he was initially indicted. Under the circumstances, we discern no abuse of discretion in the circuit court's determination that Lloyd's argument was not permitted under RCr 11.42.

Lloyd also claims that he was forced to enter a guilty plea because he wanted to avoid going to trial for the potentially increased sentence to which KRS 531.320 may have led. We are unpersuaded. Having reviewed the record on appeal, including the video recording of the sentencing hearing, the totality of the circumstances indicates Lloyd entered the plea freely, knowingly, intelligently, and voluntarily. *Kotas v. Commonwealth*, 565 S.W.2d 445, 447 (Ky. 1978). Lloyd specifically indicated he did so in the December 18, 2020, motion to enter guilty plea, and neither he nor his counsel suggested otherwise during the April 2, 2021, hearing. *See Johnson v. Commonwealth*, 412 S.W.3d 157, 168 (Ky. 2013).

Finally, in demonstrating how and why he believes KRS 531.320 is vague, Lloyd makes several factual arguments relating to his *mens rea* regarding the meaning of "sexual conduct" and the technological capabilities of the type of miniature cameras he installed in his home and that of his neighbor. However, as the circuit court held, any factual arguments were clearly and unequivocably waived by the entry of his guilty plea, and were certainly more appropriate to raise at trial or on a direct appeal. *See Taylor*, 724 S.W.2d at 225.

CONCLUSION

Because the circuit court did not abuse its discretion in denying the RCr 11.42 motion, we similarly hold that there exists no reversible error in the circuit court's denial of Lloyd's CR 60.02, CR 60.03, and declaratory judgment motions, considering all of which were duplicative of the same issues which formed the basis of Lloyd's RCr 11.42 motion. *See Foley*, 306 S.W.3d at 32. Accordingly, the circuit court's July 22, 2024, and December 12, 2024, orders are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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