

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001339-MR

CHRIS MONTAZE CATLETT

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE EDWIN M. WHITE, JUDGE
ACTION NO. 98-CR-00293

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

BUCKINGHAM, JUDGE: Chris Montaze Catlett appeals from an order of the Christian Circuit Court denying his RCr¹ 11.42 motion to vacate, set aside, or correct his sentence. We conclude the trial court correctly denied the motion and thus affirm.

On June 30, 1998, Catlett was arrested and charged with first-degree trafficking in a controlled substance as a result of selling two rocks of crack cocaine to a police informant on May 12, 1998. While in jail on the charge, Catlett was indicted on three counts of first-degree trafficking in a controlled

¹ Kentucky Rules of Criminal Procedure.

substance. One count was as a result of the May 12, 1998 incident, and the other two counts were as a result of incidents allegedly occurring on April 23 and April 24, 1998.

On September 16, 1998, Catlett entered into a plea agreement and pled guilty to the charges in each of the three counts of the indictment. On October 14, 1998, Catlett was sentenced pursuant to the plea agreement to five years in prison on each count. The court ordered Counts 1 and 2 to run consecutively and Count 3 to run concurrently for a total sentence of ten years in prison. Approximately four months later, Catlett's attorney filed a motion for shock probation, which the trial court denied.

In April 2000, Catlett filed his RCr 11.42 motion to vacate, set aside, or correct his sentence. By order entered on May 8, 2000, the trial court denied the motion without an evidentiary hearing. In its order denying the motion, the court held that "the record shows that Movant's guilty plea was knowingly, intelligently, and voluntarily made. Furthermore, there is no evidence in the record to indicate that his counsel was ineffective." This appeal by Catlett followed.

The essence of Catlett's RCr 11.42 motion is that he received the ineffective assistance of counsel. He argues that his counsel did not fully explain to him the nature of the charges against him, did not inform him of the constitutional rights he would be forfeiting by pleading guilty, failed to explain the concept of double jeopardy to him, did not investigate his case and his background, and coerced him into

pleading guilty with the unfulfilled promise that she would file a motion for shock probation. In connection with these arguments, Catlett argues that the two counts of the indictment relating to alleged offenses committed on April 23 and April 24, 1998, were "trumped up" by law enforcement officers and had absolutely no factual basis supporting them.

First, to the extent that Catlett is attempting to challenge the factual basis of the two April 1998 counts in the indictment, his guilty plea to the offenses precludes such a challenge at this late date. "Entry of a voluntary, intelligent plea of guilty has long been held by Kentucky Courts to preclude a post-judgment challenge to the sufficiency of the evidence."

Taylor v. Commonwealth, Ky. App., 724 S.W.2d 223, 225 (1986).

The court in Taylor further reasoned as follows:

A defendant who elects to unconditionally plead guilty admits the factual accuracy of the various elements of the offenses with which he is charged. By such an admission, a convicted appellant forfeits the right to protest at some later date that the state could not have proven that he committed the crimes to which he pled guilty. To permit a convicted defendant to do so would result in a double benefit in that defendants who elect to plead guilty would receive the benefit of the plea bargain which ordinarily precedes such a plea along with the advantage of later challenging the sentence resulting from the plea on grounds normally arising in the very trial which defendant elected to forego.

Id.

In connection with his argument that he received the ineffective assistance of counsel, Catlett first contends that his attorney did not fully explain the nature of the charges against him or the constitutional rights he would be forfeiting

by pleading guilty. However, in reviewing the record, we note that the colloquy between the trial court and Catlett indicates Catlett understood the charges against him as well as his constitutional rights. Furthermore, in response to a question from the trial judge at the guilty plea proceeding, Catlett's counsel indicated she believed Catlett understood his rights and the nature of the proceeding. In addition, Catlett signed a written motion to enter a guilty plea which explained to him the constitutional rights he would be waiving by pleading guilty. In short, the record supports the trial court's findings and refutes Catlett's allegations that his guilty plea was not entered knowingly, voluntarily, and intelligently.

Catlett next asserts that his counsel failed to explain the concept of double jeopardy to him. It appears he believes that the convictions for the two April 1998 incidents violate double jeopardy principles based on his allegation that the offenses never occurred but were merely "trumped up" and were nothing more than a restatement of the same charge concerning the May 12, 1998, incident. To get to the point, there is no double jeopardy issue in this case. The indictment set forth three separate offenses occurring on three separate dates. As stated earlier herein, Catlett may not attack at this late date the factual basis or sufficiency of the evidence concerning his convictions.

Catlett next argues that his counsel rendered ineffective assistance by failing to investigate the law and facts surrounding the case. The record indicates the

Commonwealth provided all discoverable material and information to Catlett's counsel. After possessing the evidence for some period of time, Catlett moved to enter a guilty plea to the charges. Further, he now fails to specifically express what counsel failed to investigate and how that failure to discover prejudiced his case. See Centers v. Commonwealth, Ky. App., 799 S.W.2d 51, 56 (1990). His argument in this regard is likewise without merit.

Catlett also asserts that he was coerced to plead guilty due to an unfulfilled promise by his counsel that she would file a motion for shock probation. In fact, if such a promise was made, it was fulfilled. Counsel filed a motion for shock probation on Catlett's behalf on February 11, 1999, but it was denied by the trial court.

Since the trial court denied Catlett's motion without an evidentiary hearing, our review concerns "whether the [RCr 11.42] motion on its face states grounds that are not conclusively refuted by the record and which, if true, would invalidate the conviction." Baze v. Commonwealth, Ky., 23 S.W.3d 619, 622 (2000), quoting Lewis v. Commonwealth, Ky., 411 S.W.2d 321, 322 (1967). For the foregoing reasons, we conclude that the record conclusively refutes the grounds stated by Catlett in support of his motion.

Thus, the order of the Christian Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Chris Montaze Catlett, Pro Se
Central City, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Janine Coy Bowden
Assistant Attorney General
Frankfort, Kentucky