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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002751-MR

MADELINE HANNAFORD — APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 01-CR-00079

COMMONWEALTH OF KENTUCKY — APPELLEE

AND

NO. 2004-CA-001017-MR

JEFFERY ALLEN — APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 01-CR-00079

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.[1]

TAYLOR, JUDGE: This consolidated appeal arises from the murder of Larry Keith Goins in Whitley County on May 9, 2001. Madeline Hannaford brings this Appeal No. 2003-CA-002751-MR from a December 12, 2003, order denying her Ky. R. Crim. P. (RCr) 11.42 motion to vacate her sentence of life imprisonment without the possibility of parole for twenty-five years. Jeffery Allen *pro se* brings Appeal No. 2004-CA-001017-MR from a May 10, 2004, order denying his "motion" for declaration of rights. We affirm.

Appeal No. 2003-CA-002751-MR

Hannaford was indicted upon the offenses of robbery in the first degree, and complicity to commit murder by aiding and assisting Jeffery Allen in killing Larry Keith Goins. As a result of a plea bargain, Hannaford pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), to the charges of first-degree robbery and complicity to commit murder. In exchange, Hannaford received a

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

sentence of life imprisonment without the possibility of parole for twenty-five years.

Hannaford filed an RCr 11.42 motion to vacate her sentence arguing ineffective assistance of counsel and involuntariness of her guilty plea. On December 12, 2003, the circuit court denied Hannaford's RCr 11.42 motion without an evidentiary hearing and without appointment of counsel. This appeal follows.

Hannaford contends the circuit court committed reversible error by summarily denying her RCr 11.42 motion to vacate her sentence. Specifically, Hannaford alleges that her guilty plea was involuntarily entered because at the time of making it, she was taking several prescribed psychotropic medications that adversely impaired her decision making ability. She alleges that these medications were "Remcon [sic], 30 mg daily; Buzbar [sic], 60 mg four times daily; Surquil [sic], 200 mg daily; and Dilantine [sic], 300 mg daily." Appellant's Brief at 5.

To be valid, it is well-established that a guilty plea must be entered knowingly, intelligently, and voluntarily. See Bronk v. Commonwealth, 58 S.W.3d 482 (Ky. 2001). Hannaford points out that a guilty plea is not intelligently entered into if the defendant is "incompetent or otherwise not in control of his mental facilities." Brady v. United States, 397 U.S. 742,

756, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). We, however, believe that Hannaford's claim is refuted upon the face of the record.

In the record, there exists a competency evaluation undertaken by Stephen H. Free, psychologist for the Kentucky Correctional Psychiatric Center.[2] At the time of the competency evaluation, Free reported that Hannaford was currently taking most, if not all, of the medications she was taking at the time she entered her guilty plea. In the evaluation, Hannaford was found to possess a rational understanding of the proceedings against her and to possess "minimal to no impairment" of her ability to recognize legal alternatives within the legal process. Moreover, the evaluation illustrated that she possessed "a fairly good grasp, at least in the abstract, of the roles (i.e., judge, jury, attorneys) and procedures (i.e., trial, sentencing, pleading) involved in adjudicating criminal cases." In conclusion, Free opined that Hannaford was competent to stand trial. Moreover, after she entered her guilty plea on July 16, 2002, the trial court conducted a competency hearing on September 9, 2002. Based largely upon the competency evaluation by Free, the trial court found that Hannaford was competent when she entered the guilty plea. Thus, we are of the opinion the

[2] While this competency evaluation was designated as "confidential," we believe Hannaford has opened the door to its use by specifically referring to it and quoting from it in her brief.

record refutes Hannaford's allegation that her guilty plea was involuntary because of the use of psychotropic medications.

Hannaford also asserts that her guilty plea was not voluntarily entered into because she was misled by her counsel into believing she was not pleading guilty. Upon entering the guilty plea, she specifically stated in open court that she was pleading "guilty" to the charges against her:

> MR. GIBSON: At this time, your Honor, Mrs. Hannaford wishes to withdraw her previous plea of not guilty and enter to the charges in the indictment a plea of guilty pursuant to Alford versus North Carolina.
>
> THE COURT: Mrs. Hannaford, has your attorney, Mr. Gibson, explained to you the nature of the charges against you, the penalties they carry, and any possible defense you might have?
>
> MRS. HANNAFORD: Yes.
>
> THE COURT: Are you satisfied that you fully understand your legal situation today?
>
> MRS. HANNAFORD: Yes.
>
> THE COURT: And how do you wish to plead to the charges against you in reliance on the Commonwealth's offer and pursuant to North Caroline [sic] versus Alford?
>
> MRS. HANNAFORD: Guilty.

The record clearly indicates that Hannaford pleaded guilty to the charges of complicity to commit murder and of robbery. It seems incredible to this Court that she is now

alleging that she did not know she was pleading guilty to these charges. The record flatly refutes this allegation.

Hannaford also argues that her trial counsel was ineffective for failing to investigate potential evidence and for not giving her an opportunity to disclose information useful for her defense. Since Hannaford pleaded guilty to the charges against her, allegations concerning the sufficiency of evidence are waived; thus, allegations of ineffective assistance of counsel for failing to investigate are likewise without merit. See Taylor v. Commonwealth, 724 S.W.2d 223 (Ky.App. 1986).

Appeal No. 2004-CA-001017-MR

On June 11, 2001, Allen was indicted upon the offenses of robbery in the first degree, and capital murder for killing Larry Keith Goins. Pursuant to plea agreement, Allen pleaded guilty to murder and first-degree robbery. He was sentenced to twenty-five years' imprisonment without the possibility of parole.

On September 3, 2004, Allen filed pro se a "Motion for Declaration of Rights." Therein, he alleged that he was incompetent and that he did not voluntarily enter the plea of guilty. On May 10, 2004, the circuit court denied Allen's motion, thus precipitating this appeal.

Allen contends the circuit court committed reversible error by denying his "motion for declaration of rights." We note that Allen is proceeding *pro se*, and we have used our best efforts to interpret his arguments. In his motion for declaration of rights filed in the Whitley Circuit Court, Allen specifically asserted:

> Counsel's failure to pursue a defense strategy based on Dininished [sic] Responsibility Doctrine or Diminished Capacity Doctrine denied petitioners 6th and 14th Constitutional Amendments and section 11 of the Kentucky Constitution, the right to effective counsel. Wilson v. United States, 962 F.2d 996 (11th Ct 1992) [sic] held that: Defendant has a constitutional right to effective counsel at sentencing.
>
> The court erred in not holding an evidentiary hearing on the question of petitioner's competency to stand trial after receiving Dr. Finke's report. If a trial had been held "the error . . . requires that a new trial be granted" via supra @ 850 (citations omitted). [sic] Petitioner did not have a trial, but entered a guilty plea after being inproperly [sic] denied his due process right.
>
> Petitioner states he was under undue influence at the time of the offense, that he could not act intelligently and voluntarily, but acted instead, subject to the will or purpose of the dominating party.
>
> Petitioner pleading guilty and receiving the maximum sentence a jury could have imposed, could not have understood the consequences of making a plea of guilty only having an I.Q. [sic] of 66.

It appears to this Court that Allen is basically arguing that his counsel was ineffective for failing to pursue a defense strategy based upon his "diminished capacity" and for failing to determine his competency to enter the guilty plea. Allen seems to be arguing that his guilty plea was involuntarily entered because of his IQ of 66.

It is well-established that RCr 11.42 provides the exclusive remedy where a defendant collaterally attacks the judgment of conviction. Howard v. Ingram, 452 S.W.2d 410 (Ky. 1970). Allegations of ineffective assistance of counsel, involuntariness of guilty plea, and insanity at the time of trial must be raised in an 11.42 motion. See Hearon v. Wingo, 411 S.W.2d 461 (Ky. 1967); Benoit v. Commonwealth, 402 S.W.2d 706 (Ky. 1966). Allen's allegations contained in his motion for declaration of rights amount to a collateral attack on the judgment. The exclusive mechanism to bring these allegations of error is by an RCr 11.42 motion, not a motion for declaration of rights as noted by the circuit court. We, thus, summarily affirm the circuit court's denial of Allen's motion for declaration of rights.

For the foregoing reasons, the orders of the Whitely Circuit Court are affirmed.

ALL CONCUR.

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