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NOT TO BE PUBLISHED

# Commonwealth of Kentucky

# Court of Appeals

NO. 2009-CA-000875-MR

CHARLES BROADDUS — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 07-CR-00462

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MOORE AND THOMPSON, JUDGES; WHITE,[1] SENIOR JUDGE.

WHITE, SENIOR JUDGE: Charles Anthony Broaddus appeals from an order of the Hardin Circuit Court which denied his motion made pursuant to Kentucky Rules of Criminal Procedure (RCr 11.42).

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

Broaddus was charged by information with one count of complicity to manufacturing methamphetamine and one count of tampering with physical evidence. He entered into a plea agreement pursuant to which the Commonwealth recommended concurrent sentences of fifteen and five years respectively on the charges. Broaddus entered his guilty plea on October 2, 2007. Although he made a motion to waive the pre-sentence investigation report ("PSI report"), the trial court nonetheless ordered the report and ordered a sentencing date. On October 16, 2007, Broaddus was sentenced to serve a total of fifteen years in accordance with the plea agreement.

On March 26, 2009, Broaddus filed a motion to withdraw his guilty plea pursuant to RCr 11.42, alleging ineffective assistance of counsel, which was denied without a hearing by the trial court. This appeal followed.

Broaddus argues that his guilty plea was not knowing, intelligent, or voluntary due to both his counsel's failure to investigate his case, and his own mental incompetence. The standard for establishing ineffective assistance of counsel in entering a guilty plea is set forth in *Sparks v. Commonwealth*, 721 S.W.2d 726, 727-28 (Ky. App. 1986):

> A showing that counsel's assistance was ineffective in enabling a defendant to intelligently weigh his legal alternatives in deciding to plead guilty has two components: (1) that counsel made errors so serious that counsel's performance fell outside the wide range of professionally competent assistance; and (2) that the deficient performance so seriously affected the outcome of the plea process that, but for the errors of counsel, there is a reasonable probability that the defendant would

> not have pleaded guilty, but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 370, 80 L.Ed.2d 203 (1985). *Cf., Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *McMann v. Richardson*, 397 U.S. 759, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 763 (1970).

Broaddus argues that his counsel was ineffective for urging him to plead guilty without conducting an adequate investigation of his case. As support for this argument, he states that his attorney visited him in jail on only one occasion prior to the plea proceedings and that another attorney with whom he had spoken for only a few minutes represented him at his pretrial hearing. He contends that the investigating police officers and DEA agents did not collect any evidence at the crime scene and that his attorney convinced him to plead guilty to a crime for which there is no evidence.

These arguments are contradicted by the record, which contains the uniform citation of the Elizabethtown Police Department and the information, which report that Broaddus and another subject sought to manufacture methamphetamine by mixing ammonia, pseudoephedrine, and lithium metal in a plastic bottle. When the police arrived, Broaddus emptied the contents of the bottle into the toilet before breaking out through the bedroom window and attempting to escape. In the face of such evidence, counsel's advice to plead guilty rather than proceeding to trial was not indicative of any professional incompetence. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy

measure of deference to counsel's judgments." *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 2066, 80 L.Ed.2d 674 (1984).

Furthermore, "[i]t is well established that the advice by a lawyer for a client to plead guilty is not an indication of any degree of ineffective assistance." *Beecham v. Commonwealth*, 657 S.W.2d 234, 236-37 (Ky. 1983). Complicity to manufacturing in methamphetamine is a class B felony which carries a potential sentence of ten to twenty years. *Weaver v. Commonwealth*, 298 S.W.3d 851, 854 (Ky. 2009); KRS 532.060(2)(b). Broaddus was facing a possible sentence of twenty years if he proceeded to trial; his counsel's performance was not deficient in recommending that he accept a sentence of fifteen years. "It has remained the policy of this Commonwealth that where a plea of guilty may result in a lighter sentence than might, otherwise, be imposed should the defendant proceed to trial, influencing a defendant to accept this alternative is proper." *Osborne v. Commonwealth*, 992 S.W.2d 860, 864 (Ky. App. 1998).

As to his claim that he had insufficient time to consult with his attorney, the record of his plea hearing shows Broaddus stating, upon questioning by the court, that he had adequate time to discuss the case with his attorney. Representations made by a defendant during such a colloquy "constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S.Ct. 1621, 1629, 52 L.Ed.2d 136 (1977); *see also Edmonds v. Commonwealth*, 189 S.W.3d 558, 569 (Ky. 2006). Although he was represented at

his pretrial hearing by Barbara Owens, Broaddus was represented by Christopher McCrary at the guilty plea hearing and at the sentencing hearing. There is no evidence that his representation on one occasion by Owens was in any way professionally deficient.

Broaddus further argues that his attorney was ineffective for failing to procure a competency hearing, or in the alternative, that the trial court should *sua sponte* have ordered a competency evaluation. Broaddus claims that he suffers from bipolar disorder, paranoid schizophrenia, and methamphetamine addiction and was consequently unable to enter an intelligent, voluntary, and willing plea.

In Kentucky, the standard of competency is whether the defendant has the substantial capacity to comprehend the nature and consequences of the proceedings against him and to participate rationally in his defense. *Bishop v. Caudill*, 118 S.W.3d 159, 163 (Ky. 2003); KRS 504.060(4). The mental standard required to stand trial is the same as it is to enter a guilty plea. *Conley v. Commonwealth*, 569 S.W.2d 682, 684 (Ky. App. 1978).

> [O]nce facts known to a trial court are sufficient to place a defendant's competence to stand trial in question, the trial court must hold an evidentiary hearing to determine the question. *See Drope v. Missouri*, 420 U.S. 162, 180, 95 S.Ct. 896, 908, 43 L.Ed.2d 103 (1975); *Pate v. Robinson*, 383 U.S. 375, 385-86, 86 S.Ct. 836, 842, 15 L.Ed.2d 815 (1966). Evidence of a defendant's irrational behavior, his demeanor in court, and any prior medical opinion on competence to stand trial are all relevant facts for a court to consider. *Drope*, 420 U.S. at 180, 95 S.Ct. at 908[.]

> KRS 504.100(1) requires a court to appoint a psychologist or psychiatrist "to examine, treat and report on the defendant's mental condition" whenever "the court has reasonable grounds to believe that the defendant is incompetent to stand trial." . . .
>
> The standard of review in such a case is, "Whether a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced doubt with respect to competency to stand trial." *Williams v. Bordenkircher*, 696 F.2d 464, 467 (6th Cir. 1983), *cert. denied*, 461 U.S. 916, 103 S.Ct. 1898, 77 L.Ed.2d 287 (1983).

*Mills v. Commonwealth*, 996 S.W.2d 473, 486 (Ky. 1999).

In denying the RCr 11.42 motion, the trial court stated that it had reviewed every court appearance made by Broaddus and concluded that "[t]here is nothing to suggest any issue of incompetency. This is particularly clear from a review of Broaddus's guilty plea." We also have reviewed the videotaped record and agree with the trial court that there was no indication that Broaddus was incompetent to enter the plea. Broaddus answered the trial judge's questions lucidly and without hesitation. He displayed no behavior which could have alerted the court that he was possibly incompetent to enter the plea.

Broaddus contends that his attorney and the trial court failed to give adequate consideration to his PSI report, which contained information that he was treated for mental illness when he was previously incarcerated in 1986. He claims that the report was filed too late to be considered at his sentencing hearing. Although the report was filed by the clerk on October 19, 2007, the record of the sentencing hearing on October 16, 2007, demonstrates that the trial court did

review the PSI report, as did Broaddus's attorney, who stated that he and his client had had an opportunity to look over the report and had no corrections to add. As the trial court aptly noted, "[e]ven if there is a history of mental health diagnosis and treatment, this does not require an attorney to argue competency in every case."

Broaddus also contends that the fact he was placed in a detoxification cell for eight days following his arrest should have alerted his counsel and the court that he was incompetent to enter a guilty plea. Evidence of prior drug use does not automatically render a defendant incompetent to enter a plea. Indeed, during his guilty plea colloquy, Broaddus assured the court that his judgment was not impaired by drugs, alcohol, or medication. We agree with the trial court that there is nothing in the record of his appearances before the court that would suggest that his period in detoxification had made him incompetent to enter a guilty plea.

Finally, because the record refutes Broaddus's allegations, the trial court did not err in refusing to grant an evidentiary hearing on his motion. *Bowling v. Commonwealth*, 981 S.W.2d 545, 549 (Ky. 1998).

The order of Hardin Circuit Court is therefore affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Charles Broaddus, *pro se*
Pineville, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Courtney J. Hightower
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