

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000558-MR

MICHAEL S. PROPES

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NO. 06-CR-00086 & 08-CR-00048

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON AND KELLER, JUDGES; ISAAC¹, SENIOR JUDGE.

ISAAC, SENIOR JUDGE: Michael S. Propes, pro se, appeals from the denial of his motion for post-conviction relief pursuant to Kentucky Rule of Criminal Procedure (RCr 11.42). Propes argues that his counsel was ineffective for failing to adequately investigate his case and the trial court erred by refusing to allow him to withdraw his guilty plea. We affirm.

¹ Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On August 14, 2006, Propes was indicted on charges of DUI, fourth or subsequent offense, and driving while his license was revoked with an aggravating circumstance of DUI. The case was set for trial in Casey Circuit Court, but Propes failed to appear. In the meantime, the grand jury returned another indictment against Propes charging him with one count of failure to comply with sex offender registration and with being a second-degree persistent felony offender (PFO). On April 18, 2008, Propes was charged with one count of first-degree robbery, seven counts of theft by unlawful taking over \$300.00, eighteen counts of first-degree burglary, and twenty-six counts of being a second-degree PFO.

The trial court held a competency hearing and found Propes was competent to stand trial on the three indictments. On November 17, 2008, Propes filed a motion to enter a guilty plea in the three cases. Pursuant to an agreement with the Commonwealth, Propes pled guilty to one count of DUI, fourth offense, one count of driving while his license was revoked, second offense with an aggravating circumstance, one count of first-degree robbery, eighteen counts of first-degree burglary, and seven counts of theft by unlawful taking over \$300.00 for a total of thirty years of imprisonment. The trial court conducted a plea colloquy on November 17, 2008. Following a sentencing hearing on February 9, 2009, the trial court entered a final judgment on the plea of guilty and imposed the recommended sentence. On February 16, 2009, Propes filed a motion pursuant to

RCr 11.42 to set aside the judgment, which the trial court denied without an evidentiary hearing. This appeal followed.

Propes argues that his counsel was ineffective for failing to conduct a reasonable investigation into the facts of his case and failing to regularly meet with him to discuss strategy.

A motion made pursuant to RCr 11.42(2) must “state specifically the grounds on which the sentence is being challenged and the facts on which the movant relies in support of such grounds. Failure to comply with this section shall warrant a summary dismissal of the motion.” See *Foley v. Commonwealth*, 17 S.W.3d 878, 890 (Ky. 2000), cert. denied, 531 U.S. 1055, 121 S.Ct. 663, 148 L.E.2d 565 (2000), overruled on other grounds by *Stopher v. Conliffe*, 170 S.W.3d 307 (Ky. 2005). To prevail on a claim of ineffective assistance of counsel, Propes must demonstrate that counsel's errors were so serious his performance did not constitute professionally competent assistance; and without counsel's deficient performance, he 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); *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). We will indulge a strong presumption that counsel's conduct falls within the wide range of professionally accepted assistance. *Strickland*, 466 U.S. 688-89.

Propes has failed to state any facts supporting his allegations. He does not offer any specific evidence or the names of any witnesses that counsel should have discovered. Moreover, Propes has neither alleged nor demonstrated

any prejudice resulting from the alleged ineffective assistance of counsel.

Therefore, the trial court properly denied the motion without an evidentiary hearing.

Next, Propes argues that the trial court erred by failing to allow him to withdraw his guilty plea. Although a motion to withdraw guilty plea pursuant to RCr 8.10 is attached to Propes' brief, there is no indication that this document was actually filed in the trial court. Because this issue was neither brought to the attention of the trial court nor ruled upon, there is no alleged error for this Court to review. *See Commonwealth, Dept. of Highways v. Williams*, 317 S.W.2d 482, 484 (Ky. 1958).

Accordingly, the order of the Casey Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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