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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000475-MR

ROBERT BEAMON APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JAMES R. SCHRAND II, JUDGE
ACTION NO. 08-CR-00356

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: CLAYTON, JONES AND TAYLOR, JUDGES.

JONES, JUDGE: Acting with the assistance of counsel, Robert Beamon appeals from a Boone Circuit Court order denying his RCr[1] 11.42 motion. Beamon maintains that the trial court erred when it denied his motion without first conducting an evidentiary hearing. Having reviewed the record in conjunction with the applicable law, we agree that an evidentiary hearing is necessary.

[1] Kentucky Rules of Criminal Procedure.

Accordingly, we vacate and remand this matter to the trial court for an evidentiary hearing.

I. Background

In 2008, when he was seventeen years of age, Beamon shot and killed Travis Webster, took Webster's car, and removed the firearm used in the shooting. Almost immediately thereafter, Beamon turned himself in to the police. The police then advised Beamon of his *Miranda* rights, which he waived. He then admitted shooting Webster and taking his vehicle. His case was transferred to the Boone Circuit Court, where a grand jury indicted him for murder, first-degree robbery, and tampering with physical evidence. Following an evaluation of Beamon's competency and criminal responsibility at the Kentucky Correctional Psychiatric Center, Dr. Richard K. Johnson testified that Beamon was able to understand and appreciate the consequences of the legal proceedings and was able to assist rationally in his own defense. The trial court entered an order finding Beamon competent to stand trial. Beamon thereafter accepted the Commonwealth's offer on a plea of guilty, and was ultimately sentenced to serve a total of forty years, in accordance with the terms of the offer.

Almost three years later, Beamon filed a *pro se* motion, pursuant to RCr 11.42, to vacate or set aside the final judgment. Beamon argued that his plea should be set aside on the basis that his counsel rendered ineffective assistance by failing to move to suppress Beamon's confession to police. Beamon asked the trial court for an evidentiary hearing and for the appointment of counsel. The trial court

granted the motion for appointment of counsel, but appointed counsel withdrew several months later in reliance on KRS[2] 31.110(2)(c), indicating that it was not a proceeding "that a reasonable person with adequate means would be willing to bring at his or her own expense." The trial court then entered an order denying the RCr 11.42 motion without conducting an evidentiary hearing. This appeal by Beamon followed.

II. Standard of Review

Not every claim of ineffective assistance merits an evidentiary hearing. *Stanford v. Commonwealth*, 854 S.W.2d 742, 743 (Ky. 1993). The law on this issue is clear: the circuit court need only conduct an evidentiary hearing if (i) the movant establishes that the error, if true, entitles him or her to relief under RCr 11.42; and (ii) the motion raises an issue of fact that "cannot be determined on the face of the record." *Parrish v. Commonwealth*, 272 S.W.3d 161, 166 (Ky. 2008). In other words, "an evidentiary hearing is not required when the record refutes the claim of error or when the allegations, even if true, would not be sufficient to invalidate the conviction." *Cawl v. Commonwealth*, 423 S.W.3d 214, 218 (Ky. 2014).

When the record fails either to prove or to refute a material issue of fact, a hearing is required. "The trial judge may not simply disbelieve factual allegations in the absence of evidence in the record refuting them." *Fraser v. Commonwealth,* 59 S.W.3d 448, 452 (Ky. 2001). "The hearing ensures a

[2] Kentucky Revised Statutes.

defendant the protections of due process in securing his right to effective assistance of trial counsel. To that end, he is permitted to call witnesses and present evidence in support of his motion, to cross-examine the witnesses for the Commonwealth, and to be represented by counsel." *Knuckles v. Commonwealth*, 421 S.W.3d 399, 401 (Ky. App. 2014).

III. Analysis

In order to succeed on a claim of ineffective assistance of counsel under RCr 11.42, a movant must satisfy both requirements of the two-prong test as outlined in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Id. at 687, 104 S.Ct. at 2064. This "test applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985).

Since Beamon entered a guilty plea, a claim that he was afforded ineffective assistance of counsel requires him to show: (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 pled guilty, but would have insisted on going to trial. *Bronk v. Commonwealth,* 58 S.W.3d 482, 486–87 (Ky. 2001). *See also Hill v. Lockhart,* 474 U.S. 52 (1985).

In other words, "to obtain relief [on an ineffective assistance claim] a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." *Stiger v. Commonwealth*, 381 S.W.3d 230, 237 (Ky. 2012) (quoting *Padilla v. Kentucky*, 559 U.S. 356, 372, 130 S.Ct. 1473, 1485, 176 L.Ed.2d 284 (2010)) (alteration in original).

To be valid, a guilty plea must represent a voluntary and intelligent choice among the alternative courses of action open to the defendant. *North Carolina v. Alford,* 400 U.S. 25, 31, 91 S.Ct. 160, 164, 27 L.Ed.2d 162 (1970); *Sparks v. Commonwealth,* 721 S.W.2d 726, 727 (Ky. App. 1986). "Whether a guilty plea is voluntarily given is to be determined from the totality of the circumstances surrounding it." *Rigdon v. Commonwealth*, 144 S.W.3d 283, 287 (Ky. App. 2004). Defense counsel's alleged ineffectiveness in failing to investigate and prepare a defense for trial is part of the totality of the circumstances surrounding the alleged involuntary plea. *Commonwealth v. Tigue*, 459 S.W.3d 372, 393 (Ky. 2015)

In his *pro se* motion before the trial court, Beamon argued that once he was taken to the police department, and his interviewer was made aware that he was a

juvenile, the proceedings should have been stopped and his guardian notified in accordance with KRS 610.200(1). He contended that his trial counsel should have known that his statement to the police was not knowing and voluntary, but was based on coercion and inducement at the time of his arrest, and that counsel should have moved to suppress the statement on those grounds. Beamon contends that if his confession had been suppressed, he would have decided not to plead guilty, gone to trial, and sought an instruction on self-defense. He argues that his attorney's failure to investigate the suppression issue forced him to plead guilty.

KRS 610.200(1) provides:

> When a peace officer has taken or received a child into custody on a charge of committing an offense, the officer shall immediately inform the child of his constitutional rights and afford him the protections required thereunder, notify the parent, or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate, and if the parent is not available, then a relative, guardian, or person exercising custodial control or supervision of the child, that the child has been taken into custody, give an account of specific charges against the child, including the specific statute alleged to have been violated, and the reasons for taking the child into custody.

Id. A violation of this statutory notification requirement does not automatically render any statement made by the child inadmissible, if it can be otherwise shown that the statement was given voluntarily. *Murphy v. Commonwealth*, 50 S.W.3d 173, 184-85 (Ky. 2001). In evaluating the voluntariness of a minor's confession, "the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not a

product of ignorance of rights or of adolescent fantasy, fright or despair." *Id.* at 185.

Such a showing requires a highly fact-specific inquiry. In *Taylor v. Commonwealth*, 276 S.W.3d 800 (Ky. 2008), for instance, Taylor alleged that statements to police made when he was a juvenile should have been suppressed because the police did not notify his mother of his arrest and charges until several hours after he had been taken into custody. The Supreme Court noted that the police did make efforts to contact his mother, that prior to the arrest his mother knew that he was a suspect in a murder, and that the police were pursuing him. After the detectives advised Taylor of his *Miranda* rights, Taylor indicated that he did not have any questions, that he understood his rights, and that he wanted to talk about what happened. Taylor's subsequent statements and demeanor revealed that he was calm, aware of the consequences of his actions, and interested in helping himself by cooperating. The detectives gave Taylor a meal, drinks, cigarettes, and bathroom breaks. Rather than threatening or coercing Taylor, the detectives informed him that they could not guarantee any specific outcome in exchange for his cooperation. The Court concluded from these facts in the record that there was no evidence of police coercion and consequently the alleged violation of KRS 610.200(1) did not constitute grounds for excluding Taylor's confession. *Taylor*, 276 S.W.3d at 805-806.

In Beamon's case, analogous facts concerning the circumstances of his statement and whether his counsel considered filing such a motion would have

been elicited at an evidentiary hearing. Based on the limited record, however, we cannot tell whether Beamon's counsel ever considered filing a motion to suppress. We believe that an evidentiary hearing is necessary to properly resolve Beamon's claim. Our opinion should not, however, be misconstrued as endorsing the merits of Beamon’s claim. It is simply that, under the facts of this case, he is entitled to an evidentiary hearing, as his allegations cannot be adequately refuted by the record. *Parrish*, 272 S.W.3d at 166.

IV. Conclusion

Accordingly, we vacate the Boone Circuit's Court's order and remand this matter for an evidentiary hearing on Beamon's RCr 11.42 motion.

ALL CONCUR.

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