

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001089-MR

KAMEON D. YOUNG

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 09-CR-00008, 09-CR-00020, 09-CR-00246

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND KRAMER, JUDGES.

CLAYTON, JUDGE: Kameon D. Young appeals the order of the Christian County Circuit Court denying his motion made pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42 wherein he claimed ineffective assistance of trial counsel. After careful review of the record and the applicable law, we affirm.

In January 2009, a Christian County Grand Jury charged Young under three separate indictments, with first-degree trafficking in a controlled substance, second offense or greater, while armed; first-degree possession of a controlled substance, second offense or greater; first-degree assault; possession of a handgun by a convicted felon; possession of marijuana, while armed; tampering with physical evidence; possession of drug paraphernalia, subsequent offense; possession of marijuana, second offense; first-degree trafficking in a controlled substance, second offense or greater; and first-degree persistent felony offender (PFO).

Young's indictments were eventually consolidated, and on August 13, 2010, he pleaded guilty to all charges, with the exception of possession of drug paraphernalia, subsequent offense, and possession of marijuana, both of which were dismissed. In exchange for his guilty plea, the Commonwealth agreed to recommend that Young receive a total concurrent sentence of twenty years' imprisonment—the statutory minimum based on the charges for which he was indicted. The circuit court eventually accepted the Commonwealth's recommendation and, in accordance with the plea agreement, sentenced Young to twenty years' imprisonment.

In June 2013, Young moved, *pro se*, to set aside his sentence pursuant to RCr 11.42. The trial court appointed counsel, who supplemented Young's motion in December 2013. In his motion, Young alleged that his counsel had provided ineffective assistance by improperly advising him as to the effect of the

violent offender statute on his parole eligibility. Without holding an evidentiary hearing, the circuit court denied Young's motion on May 1, 2014. This appeal followed.

When reviewing a claim of ineffective assistance of counsel based on counsel's performance leading to a guilty plea, a reviewing court applies the well-known test established by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In accordance with *Strickland*, in order to prove an ineffective assistance of counsel claim, a movant must first show that counsel's performance was deficient. In other words, the movant must prove counsel's performance fell outside the wide range of prevailing professional norms based on an objective standard of reasonableness. *Strickland*, 466 U.S. at 688-89, 104 S.Ct. at 2065. Once it is shown that counsel's performance was deficient, the movant must also show that he was prejudiced by counsel's deficient performance.

Motions which fail adequately to specify grounds for relief may be summarily denied, as may be motions asserting claims refuted or otherwise resolved by the record. *Commonwealth v. Elza*, 284 S.W.3d 118 (Ky. 2009). Motions adequately alleging valid claims not refuted by the record entitle the movant to an evidentiary hearing. *Fraser v. Commonwealth*, 59 S.W.3d 448, 452 (Ky. 2001). Because an evidentiary hearing was not held in this case, our review is limited to "whether the motion on its face states grounds that are not conclusively

refuted by the record and which, if true, would invalidate the conviction.” *Lewis v. Commonwealth*, 411 S.W.2d 321, 322 (Ky. 1967).

Young’s sole argument on appeal is that his trial counsel misadvised him regarding parole eligibility. He claims counsel informed him that he would be eligible for parole after serving twenty percent of his twenty-year sentence, when in fact, he would not be eligible for parole until he served eighty-five percent. Kentucky Revised Statutes (KRS) 439.3401. The circuit court denied Young’s motion without a hearing because Young did not show how he was prejudiced by any alleged misadvice. The court highlighted that the evidence against Young was overwhelming, including a confession to shooting the assault victim. Based on the overwhelming evidence against Young, the court found that his chances at trial were not good. Thus, even with accurate information regarding his parole eligibility, the court did not believe it would have been rational for Young to turn down the plea offer. After reviewing the evidence, we agree that the record easily refutes Young’s claim that he was prejudiced as a result of the alleged misadvice by his trial counsel.

In *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), the United States Supreme Court held that trial counsel’s misadvice regarding the effect of a guilty plea on a defendant’s immigration status satisfied the first prong of the *Strickland* test for ineffective assistance of trial counsel. The court emphasized the automatic nature and penalty-like effect of deportation to the criminal sentence. Using the reasoning applied in *Padilla*, the Kentucky Supreme

Court recently held that trial counsel has a duty to accurately apprise his client of the violent offender statute's effect on his parole eligibility. *Commonwealth v. Pridham*, 394 S.W.3d 867 (Ky. 2012). Both misadvising and failing to advise a client amount to deficient performance by trial counsel.

Here, Young claims he should have been afforded an evidentiary hearing because it cannot be determined by the record what advice he received from trial counsel. However, our courts have consistently held that a hearing is not necessary when a trial court is able to resolve issues on the basis of the record *or* when it determines that the allegations, even if true, would not be sufficient to invalidate the convictions. *Lewis v. Commonwealth*, 411 S.W.2d 321, 322 (Ky. 1967); *see also Commonwealth v. Davis*, 14 S.W.3d 9, 11 (Ky. 1999). The trial court determined that a hearing was unnecessary because Young was not prejudiced.

In the guilty plea context, in order to prove prejudice, the challenger must demonstrate a “reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). However, conclusory allegations are not sufficient. “The movant must allege facts that, if proven, would support a conclusion that the decision to reject the plea bargain and go to trial would have been rational, *e.g.*, valid defenses, a pending suppression motion that could undermine the prosecution's case, or the realistic potential for a lower sentence.” *Stiger v. Commonwealth*, 381 S.W.3d 230, 237 (Ky. 2012). If

the movant fails to allege specific facts to support the allegation of prejudice, his motion may be summarily dismissed. *Sanders v. Commonwealth*, 89 S.W.3d 380, 385 (Ky. 2002), *overruled on other grounds by Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009).

As noted earlier, Young was charged with first-degree trafficking in a controlled substance. That charge was enhanced to a class A felony as a result of it being Young's second or greater offense, and because Young was armed at the time. If convicted of this offense, Young faced a minimum sentence of twenty years in prison, and a maximum sentence of fifty years to life. Moreover, standing convicted of a class A felony would have subjected Young to violent offender parole eligibility restrictions. KRS 439.3401. Young also faced a first-degree assault charge, which is a class B felony involving serious injury. If convicted of this offense, Young faced a sentence of ten to twenty years' imprisonment. However, this sentence would have been enhanced to a minimum of twenty, and a maximum of fifty to life, by virtue of Young being a PFO. Making his prospects even worse, in addition to the two charges carrying a maximum life sentence, Young faced another five felony charges under the indictments. At the very least, the minimum sentence that Young could have hoped to receive after a trial, based on his PFO status, is exactly what he received in exchange for his plea of guilty-- twenty years' imprisonment with parole eligibility after serving eighty-five percent of his sentence. As a result, Young cannot demonstrate prejudice.

Additionally, there is nothing in the record that would cause us to believe Young would have been acquitted of any of the charges had he proceeded to trial. As noted by the circuit court, the record establishes overwhelming evidence of Young's guilt. Responding to a "shots fired" call, police found Young in the area of the shooting wearing a bloody shirt. After being interviewed by detectives, Young confessed to shooting the victim and assisted officers in locating the handgun used in the shooting. Upon arrest, police found several rocks of crack cocaine located in Young's socks. A search of Young's residence produced more drugs and drug paraphernalia. A subsequent criminal record check showed that Young had been convicted of six prior felonies.

Clearly, based on the likelihood of conviction and the minimum sentences for the indicted crimes, Young had virtually no chance of receiving a lighter sentence. Indeed, considering the strong evidence favoring the Commonwealth's case and the possibility that he could have received up to two life sentences, there was a very strong possibility of Young receiving an even harsher sentence. For this reason, we are convinced that proceeding to trial would not have been a rational choice.

We are also convinced that the circuit court correctly dismissed Young's claim without holding an evidentiary hearing. Young failed to allege any defenses, any suppression issues, any realistic chance at a lower sentence, or any other specific facts to support a claim of prejudice. In fact, Young readily admits that the record is devoid of any potential defenses. He also admits that there was

no realistic potential for a lower sentence. Young does believe that he satisfied the prejudice prong of the *Strickland* test because the record is clear that he was very concerned with parole eligibility. However, a self-serving statement that he would have chosen to proceed to trial is not enough. Young must provide some evidence to show that refusing the plea deal and opting for trial would have been objectively reasonable. Otherwise his motion is subject to summary dismissal.

Kentucky courts have consistently held that “...allegations which are not supported by specific facts do not justify an evidentiary hearing because RCr 11.42 does not require a hearing to serve the function of a discovery deposition.” *Sanders v. Commonwealth*, 89 S.W.3d 380, 385 (Ky. 2002) (*overruled on different grounds by Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009)). As we stated above, the record provides ample proof that it would not have been a rational decision for Young to reject the plea deal and proceed to trial. He had little, if any, chance of improving his outcome, but could have easily fared worse. Absent any specific allegation of prejudice flowing from counsel’s alleged misadvice, the circuit court was justified in summarily dismissing Young’s claim.

For the foregoing reasons, the order of the Christian County Circuit Court is affirmed.

ALL CONCUR.

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