

RENDERED: NOVEMBER 18, 2016; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-000076-MR

KENNETH PARKER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JAMES M. SHAKE, JUDGE  
ACTION NOS. 10-CR-003011 AND 11-CR-001154

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, D. LAMBERT, AND NICKELL, JUDGES.

D. LAMBERT, JUDGE: Kenneth Parker appeals from the February 8, 2013 order of the Jefferson Circuit Court denying his petition for relief under Kentucky Rules of Criminal Procedure (RCr) 11.42. After review, we affirm.

## I. BACKGROUND

As Ateequ Rahman was leaving his business on or about June 8, 2010, he was told by Kenneth Parker that the tires on his vehicle were flat. Rahman recognized Parker as a frequent customer of his business and went to his vehicle. When Rahman arrived and started examining his tires, Parker hit him in the back of the head with a tire iron. The force of the blow knocked Rahman down, and while down, Parker took approximately \$20.00 in cash from Rahman's pockets.

After Rahman later identified Parker from a photo, Parker was arrested and eventually indicted on charges of first-degree robbery, first-degree assault, and for being a persistent felony offender in the first degree. Parker pleaded guilty to amended robbery and assault charges. He received a ten-year sentence on May 5, 2011.

Parker filed the RCr 11.42 motion *sub judice* to challenge the voluntariness of his guilty plea. In the motion, he claimed his cognitive limitations prevented him from knowingly pleading guilty. He also claimed his trial counsel rendered ineffective assistance by failing to correctly advise him as to his parole eligibility. The circuit court denied Parker's motion on December 3, 2012, without an evidentiary hearing. According to the circuit court's order, Parker clearly chose to plead guilty and avoid trial based on information in the record. After a clerical error led Parker to file an untimely appeal, he was eventually given leave to file this belated appeal.

## II. STANDARD OF REVIEW

In the context of a guilty plea, the test for ineffective assistance of counsel is two-fold. The burden is on the defendant to show (1) his trial counsel committed a serious error that rendered the professional assistance incompetent, and (2) there was a reasonable probability that, but for the attorney's deficient performance, the defendant would have stood trial rather than plead guilty. *Sparks v. Commonwealth*, 721 S.W.2d 726, 727-28 (Ky. App. 1986); *see generally Strickland v. Washington*, 466 U.S. 668, 687 (1984)(landmark case outlining elements of an ineffective assistance claim). Whether the defendant voluntarily entered a guilty plea is judged from the totality of the circumstances, and "the trial court is in the best position to determine the totality of the circumstances surrounding a guilty plea." *Rigdon v. Commonwealth*, 144 S.W.3d 283, 287-88 (Ky. App. 2004). Accordingly, we review the trial court's determination of voluntariness under the clearly erroneous standard. *Id.*

### **III. DISCUSSION**

On appeal, Parker presents arguments similar to the ones he presented to the trial court. He essentially argues that he involuntarily entered the guilty plea based on an assessment of the circumstances surrounding his decision. He points to his second-grade reading level, for instance, in support of his position that by simply reading the plea deal, he was unable to fully comprehend its terms. He also claims his attorney committed an error by failing to inform him that he would not be eligible for parole after serving 20 percent of his sentence. For the following reasons, however, the circuit court did not commit reversible error.

Here, the circuit court properly found Parker’s counsel justifiably advised him to plead guilty because the victim was able to identify Parker as his assailant and because Parker potentially faced an enhanced prison sentence by operation of his status as a first-degree persistent felony offender. The trial court also properly found from Parker’s *Boykin* colloquy that he clearly understood the terms of the plea deal, including that he would not be eligible for parole after serving two years, and freely signed the Commonwealth’s offer form. “Solemn declarations in open court carry a strong presumption of verity.” *Centers v. Commonwealth*, 799 S.W.2d 51, 54 (Ky. App. 1990)(citing *Blackledge v. Allison*, 431 U.S. 63, 97 (1977)). And, when considered in tandem with both Rahman’s identification and Parker’s potential sentence of 20-50 years, the unchallenged, and thus lawful, colloquy substantially supported the circuit court’s conclusion that Parker voluntarily pleaded guilty. The judgment of the Jefferson Circuit Court is hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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