

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-002684-MR

PEDRO VEGA OVER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE F. KENNETH CONLIFFE, JUDGE  
ACTION NO. 97-CR-000698

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, GUIDUGLI AND HUDDLESTON, JUDGES.

GUIDUGLI, JUDGE. Pedro Vega Over ("Over") appeals from an order of the Jefferson Circuit Court denying his motion for RCr 11.42 relief. We affirm.

On January 4, 1997, Over was arrested by officers of the Louisville Police Department after an altercation with James Sullivan and other individuals. Two months later, Over was indicted by the Jefferson County Grand Jury on the charges of assault in the first degree, wanton endangerment in the first degree, assault in the fourth degree, and cruelty to animals in the second degree.

On July 23, 1997, Over appeared in circuit court and entered an Alford plea to the amended charge of assault in the second degree. The remaining charges were dismissed. Over returned to court on September 19, 1997, and received a sentence of five years in prison. His subsequent motion for probation was denied.

On December 28, 1998, Over filed a pro se motion to vacate the judgment pursuant to RCr 11.42. Over then obtained counsel and filed a supplemental motion on June 7, 1999. As a basis for the motion for relief, Over maintained that he received ineffective assistance of counsel in the circuit court proceeding. Specifically, Over, a Cuban national who has resided in the United States since 1980, maintained that his trial counsel failed to inform him that a plea of guilty could result in his detention or deportation to Cuba by the Immigration and Naturalization Service ("INS"). Over argued that he could not make a voluntary and intelligent choice among the alternatives available to him without being advised of the immigration consequences of a guilty plea. As such, he maintained that counsel was ineffective and that he is entitled to a new trial.

On August 9, 1999, a hearing on the motion was conducted. The motion was denied by way of order entered October 11, 1999, and this appeal followed.

Over now argues that the circuit court committed reversible error in finding that he received effective assistance of counsel at trial. He reiterates the argument he maintained below, to wit, that he was not availed of the opportunity to make

a voluntary and intelligent choice among the alternatives available to him because trial counsel failed to inform him that a guilty plea could result in his deportation or indefinite detainment. In sum, he maintains that trial counsel had a duty under Section 11 of the Kentucky Constitution to inform him of the immigration consequences of his plea. Having failed to do so, Over seeks to have his conviction reversed for further proceedings.

We have closely studied the record, the law, and the arguments of counsel, and cannot conclude that the circuit court committed reversible error in denying Over's motion for relief. As a general rule, the trial court is under no duty to examine every conceivable consequence of pleading guilty. See generally, Turner v. Commonwealth, Ky. App., 647 S.W.2d 500 (1982) (holding at p.500 that " . . . a knowing, voluntary and intelligent waiver does not necessarily require that the defendant be informed of every possible consequence and aspect of a guilty plea. A guilty plea that is brought about by a person's own free will is not less valid because he did not know all possible consequences of the plea...").

The question, then, is whether Over's alleged failure to understand the immigration consequences of his plea falls outside the general rule set forth in Turner and its progeny.<sup>1</sup> We believe that it does not. There must be reasonable limits on what constitutes a voluntary and intelligent waiver, and we do

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<sup>1</sup>The record indicates that Over was no stranger to INS detainment, having been detained for seven years beginning in 1986 subsequent to a plea of guilty on three felonies in Florida.

not believe those limits impose upon defense counsel the duty to advise a client on immigration matters. Turner is dispositive.

The standard of review for claims of ineffective assistance is well-established. Over must show that counsel's performance was deficient, and that he was prejudiced by the deficient performance. See generally, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Gall v. Commonwealth, Ky., 702 S.W.2d 37 (1985). Over has not met this burden. Arguendo, even if counsel was under a duty to address immigration matters with Over, he has still failed to show that the result of the circuit court proceeding would have been different but for the alleged deficient performance. Over could have received a sentence of several decades in prison, but received a five-year sentence pursuant to the plea agreement. Nothing in the record indicates that the outcome of the proceeding would have been more favorable to Over had the matter gone to trial. Both prongs of the Strickland test require satisfaction, and Over has failed to satisfy either. As such, we find no error on this issue.

Over also argues that his trial counsel failed to adequately investigate the facts of his case and failed to exercise proper diligence in its preparation. He maintains that this failure alone forms a sufficient basis for remanding the matter for a new trial.

We have closely examined this claim of error, and do not believe that it forms a sufficient basis for a finding of ineffective assistance. First, we are not persuaded by Over's

contention that trial counsel's investigation or preparation was inadequate. While it is true that Over was represented by three different public defenders prior to entering his plea, the record does not support the assertion that the representation was inadequate. Furthermore, Over does not direct our attention to any witnesses, undisclosed facts, or other circumstances which trial counsel failed to uncover, the absence of which prejudiced the proceeding against him. See Strickland, supra. As such, we do not find Over's argument on this issue persuasive, and cannot rely upon it as a basis for tampering with the order on appeal.

For the foregoing reasons, we affirm the order of the Jefferson Circuit Court which denied Over's motion for RCr 11.42 relief.

ALL CONCUR.

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