

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002533-MR

CHRISTIAN HARMON

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 98-CR-00078

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: EMBERTON, GUIDUGLI and McANULTY, JUDGES.

EMBERTON, JUDGE: Christian Harmon appeals from the denial of Kentucky Rules of Criminal Procedure (RCr) 11.42 relief from a judgment entered on his guilty plea to three counts of third-degree rape involving a fifteen-year-old child. He argues that his counsel was ineffective in failing to properly advise him of the length of time he would have to serve prior to being eligible for parole and in failing to inform him that a three-year period of "conditional discharge" would be added to the five-year term he accepted in exchange for his plea. We affirm.

In October 1998, Harmon, by his own admission in a detailed statement, had sexual intercourse three times with a

fifteen-year-old child he had contacted over the Internet. Harmon was arrested less than one hour after he committed the crimes in a Days Inn Motel room from which the police collected three used condoms and a birthday card indicating Harmon's awareness of the age of the victim. On November 18, 1998, Harmon entered a guilty plea to three counts of third-degree rape. Consistent with the plea agreement, Harmon was ordered to serve three concurrent five-year terms. Subsequent motions for probation and shock probation were denied. On December 3, 1999, the trial court entered an order indicating that a statutorily mandated period of conditional probation had inadvertently been omitted from the judgment. Shortly thereafter, on December 18, 1999, Harmon filed a pro se RCr 11.42 motion alleging ineffective assistance of counsel. That motion was denied on April 25, 2000, but on May 3, 2000, counsel for Harmon filed a motion to hold his previous RCr 11.42 motion in abeyance pending supplementation by counsel. The trial court thereafter set aside his previous order and allowed counsel to supplement Harmon's pro se pleadings. By order dated October 3, 2000, the trial court denied the supplemented RCr 11.42 motion without holding a requested evidentiary hearing.

In this appeal, Harmon predicates his claim of ineffective assistance of counsel on the theory that he received material misinformation from his trial counsel during the course of plea negotiations. He asserts that if he had in fact received correct information as to the timing of parole eligibility and the period of conditional probation mandated by Kentucky Revised

Statutes (KRS) 532.043, he would have rejected the Commonwealth's offer and insisted on proceeding to trial. Having reviewed Harmon's contention in light of the evidence of record, we find no error in the trial court's decision in this case.

Harmon's complaint regarding parole eligibility centers on the allegation that he was informed he would be eligible for parole in one year but later found out that he could not complete the required sex offender treatment program within that time frame. This court, in Centers v. Commonwealth,¹ reiterated the familiar standard of Strickland v. Washington,² that in order to prevail on a claim of ineffective assistance of counsel, a defendant must show (1) that counsel's performance fell outside the range of professionally competent assistance; and (2) that the deficient performance so prejudiced the process that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and the outcome would have been different. Harmon's complaint does not satisfy the Strickland criteria on either point.

In this case, Harmon was facing a potential sentence of fifteen years for the crimes based upon a set of facts as to which a jury was not likely to be sympathetic. We find no reasonable probability that but for the failure to advise him that completion of the sex offender treatment program might exceed the one-year time frame for initial parole eligibility, Harmon would have insisted upon taking the chance that he might

¹ Ky. App., 799 S.W.2d 51, 55 (1990).

² 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

receive an additional ten years in addition to the five he received pursuant to the plea. Furthermore, the holding in Turner v. Commonwealth,³ makes clear that a defendant need not be informed of every possible consequence and aspect of his plea. Thus, Harmon did not demonstrate either ineffective assistance or resulting prejudice.

Nor can he demonstrate prejudice resulting from the failure to be advised of the three-year period of conditional discharge after completion of his sentence required by KRS 532.043. As noted by the Commonwealth, KRS 532.043 would apply to Harmon's sentence regardless of whether he pled guilty or opted to go to trial. We are therefore convinced that even if he had not been informed of the period of conditional discharge, Harmon cannot demonstrate an error so egregious that it would likely affect the outcome of his case.

The denial of Harmon's RCr 11.42 motion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher F. Polk
Rob Eggert
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General

N. Susan Roncarti
Assistant Attorney General
Frankfort, Kentucky

³ Ky. App., 647 S.W.2d 500 (1982).