

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002033-MR

LARRY RAY FREEMAN

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
ACTION NO. 99-CR-00043

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BUCKINGHAM, COMBS, and DYCHE, Judges.

COMBS, JUDGE: Larry Ray Freeman, *pro se*, appeals from the Boone Circuit Court's July 18, 2000, denial of his RCr¹ 11.42 motion to vacate, set aside, or correct his judgement and sentence. Having concluded the circuit court did not err, we affirm.

On or about July 20, 1994, Freeman was operating a motor vehicle while intoxicated. Freeman was involved in an accident in Boone County, Kentucky which led to the death of Ms. Diane Washer. In an effort to conceal the accident, Freeman buried Ms. Washer's body under some rocks in a creek. Freeman was arrested for the manslaughter death of Ms. Washer on December

¹Kentucky Rules of Criminal Procedure.

10, 1998. He was indicted for manslaughter by the Boone County Grand Jury in February of 1999. On March 22, 1999, Freeman filed a motion to enter a guilty plea based upon a plea agreement with the Commonwealth. On April 20, 1999, he was sentenced in accordance with the plea agreement to twenty years in the state penitentiary.

On August 18, 1999, Freeman filed a motion pursuant to RCr 11.42 to vacate or set aside his judgement and sentence. He argued that his guilty plea had not been made voluntarily, intelligently, and knowingly and that his counsel had been ineffective. The Boone Circuit Court granted Freeman's motion for appointed counsel in his RCr 11.42 proceeding and for the newly appointed counsel to file a supplemental memorandum in support of his RCr 11.42 motion on April 7, 2000. The Boone Circuit Court then denied Freeman's RCr 11.42 motion on July 18, 2000, leading to this appeal.

On appeal, Freeman contends the circuit court erred: (1) in finding that his guilty plea was made knowingly, intelligently, and voluntarily and (2) in holding that he did not receive ineffective assistance of counsel. There is no evidence in the record to indicate that the circuit judge in any way abused his discretion in denying Freeman's RCr 11.42 motion. Thus, we will not disturb his ruling pursuant to Bowling v. Commonwealth, Ky., 981 S.W.2d 545, 548 (1998).

Freeman's claim that his plea was not made voluntarily, intelligently or knowingly is refuted by the record. A review of his claim pursuant to Boykin v. Alabama, 295 U.S. 238, 89 S.Ct.

1709, 23 L.Ed2d 274 (1969), reveals that Freeman signed both the Commonwealth's offer and his own motion to enter a guilty plea. The form signed by Freeman indicates that he understood what he was doing and that his attorney had addressed the relevant issues with regard to the consequences of his plea. A form like the one signed by Freeman satisfies the Boykin standard. Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed.2d 1461, 1466 (1938); Kotas v. Commonwealth, Ky., 565 S.W.2d 445, 447 (1978).

In reviewing Freeman's plea under the totality-of-the-circumstances test of Commonwealth v. Crawford, Ky., 789 S.W.2d 779, 780 (1990), we still believe that Freeman entered a voluntary and knowing plea. The record reveals that Freeman confessed to causing the death of Ms. Washer. It discloses that he had hidden her body for some four years prior to his confession. Despite his claim, there is no indication in the record that he sought to withdraw his guilty plea. These facts, considered in conjunction with the forms signed by Freeman, indicate a voluntary and intelligent plea.

In order for Freeman to prove his second argument that he received ineffective assistance of counsel, he bore the burden of showing: (1) that counsel made errors so serious that his performance fell outside the wide range of professionally competent assistance and (2) that the deficient performance was so prejudicial that the outcome of the defense would very likely have produced a different result but for that deficiency. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366,

88 L.Ed.2d 203 (1985); Taylor v. Commonwealth, Ky. App., 724 S.W.2d 223 (1986).

Freeman argues his counsel failed to properly investigate the events that transpired on the evening of the accident and that his attorney failed to advise him concerning the law pertaining to the charge pending against him. A careful review of the record refutes these claims. Freeman's confession as to what had occurred was a part of the record. Additionally, the motion to enter a plea signed by Freeman indicated that his attorney had reviewed the charges and the relevant law with him prior to his plea. Freeman's argument that his counsel was ineffective is unpersuasive.

For these reasons, the order of the Boone Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT *PRO SE*:

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