

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002550-MR

MICHAEL FAUCETT

APPELLANT

v. APPEAL FROM HANCOCK CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NOS. 97-CR-00009 AND 97-CR-00011

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: EMBERTON, HUDDLESTON, AND McANULTY, JUDGES.

McANULTY, JUDGE: The appellant, Michael Faucett, appeals from an order of the Hancock Circuit Court that denied his RCr¹ 11.42 motion to vacate, set aside, or correct his sentence and conviction for robbery, attempted assault, forgery, and possession of drug paraphernalia. We affirm.

On March 7, 1997, Faucett was indicted in the Hancock Circuit Court on one count of first-degree robbery, one count of third-degree attempted assault, one count of possession of drug paraphernalia, and four counts of second-degree forgery. Faucett

¹Kentucky Rules of Criminal Procedure

was arraigned on these charges on April 4, 1997, and trial was scheduled for June 12, 1997. While awaiting trial, however, Faucett attempted suicide and was ordered to undergo psychological evaluation at Kentucky Correctional Psychiatric Center. Although competent to stand trial, Faucett was found to suffer from both depression and substance dependency.

On June 13, 1997, Faucett pled guilty but mentally ill in Hancock Circuit Court to each of the charges for which he was originally indicted. His guilty pleas were made pursuant to a plea agreement with the Commonwealth. In accordance with that agreement, on July 9, 1997, a final judgment was entered against Faucett sentencing him to fifteen years in prison for first-degree robbery, one year for third-degree attempted assault, one year for possession of drug paraphernalia, and four years for each count of second-degree forgery, with all sentences to run concurrently.

On April 12, 1998, Faucett filed a motion pursuant to RCr 11.42 to vacate, set aside, or correct the sentence imposed by the Hancock Circuit Court. In his motion, Faucett alleged that his guilty but mentally ill plea was invalid because his counsel had advised him that entering such a plea would result in Faucett being placed in a mental health facility for treatment rather than in prison. This motion was denied by the circuit court without conducting an evidentiary hearing on June 4, 1998. Faucett appealed from the denial of his motion and this court consequently ordered the Hancock Circuit Court to conduct an evidentiary hearing into the validity of Faucett's complaint. On

April 12, 2002, Faucett was afforded an evidentiary hearing on his RCr 11.42 motion. However, one month later Faucett's motion was denied by the circuit court and this appeal followed.

Faucett's lone complaint on appeal is that the Hancock Circuit Court erred by failing to consider the totality of the circumstances when evaluating whether his guilty plea was made voluntarily, knowingly, and intelligently. More specifically, Faucett claims that but for his counsel's alleged misrepresentation that upon entering a plea of guilty but mentally ill he would be sentenced to a mental health facility for treatment rather than prison, Faucett would not have entered such a plea and would have exercised his constitutional right to a jury trial.

It is well established that the movant for the type of post-conviction relief afforded under RCr 11.42 has the "heavy burden" of raising doubt about the regularity of proceedings under which he was convicted and must establish convincingly that he has been deprived of some substantial right which would justify such relief. Commonwealth v. Campbell, Ky., 415 S.W.2d 614, 616 (1967), citing Wahl v. Commonwealth, Ky., 396 S.W.2d 774 (1965). Where the record does not substantiate a movant's allegation of ineffective assistance of counsel, he is afforded no relief under RCr 11.42. Wooten v. Commonwealth, Ky., 473 S.W.2d 116, 117 (1971). Moreover, a movant cannot substantiate a claim that his guilty plea was involuntary and not properly accepted by the court where the record indicates that before the plea was accepted the movant answered the following questions:

"(a) whether this was his personal decision, (b) whether such desired plea on his part was voluntary, (c) whether he felt he had been properly and efficiently represented by counsel, and (d) whether he knew he had a right to a trial by jury with assistance of counsel." Glass v. Commonwealth, Ky., 474 S.W.2d 400, 401 (1972). Such is the case at bar.

The record is clear that Faucett entered his guilty plea voluntarily, knowingly, and intelligently. The plain language of the Commonwealth's plea offer indicates that upon entering his guilty but mentally ill plea, Faucett was to be sentenced to fifteen years in the custody of the Kentucky Department of Corrections. Moreover, when entering his plea at trial, Faucett was asked, inter alia, whether his plea was made voluntarily, knowingly, and intelligently. Faucett claims that counsel convinced him to plead guilty but mentally ill so as to serve his sentence in a mental health facility rather than in a prison. This conversation has been expressly denied by Faucett's counsel. However, even if credible, evidence of this conversation alone is insufficient to meet the "heavy burden" placed on Faucett by Campbell. Campbell at 616, citing Wahl v. Commonwealth, Ky., 396 S.W.2d 774 (1965). Therefore, the circuit court properly denied Faucett's RCr 11.42 Motion alleging ineffective assistance of counsel.

In conclusion, Faucett's complaint that he did not voluntarily, knowingly, and intelligently plead guilty is clearly refuted by evidence addressed at the hearing. Therefore, the

Hancock Circuit Court did not err in denying his RCr 11.42 motion. The order of the Hancock Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael Faucett, *Pro Se*
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BRIEF FOR APPELLEE:

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