RENDERED: December 13, 2002; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000939-MR

RANDY D. STOKES, JR. APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS McDONALD, JUDGE
ACTION NO. 98-CR-002532

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BUCKINGHAM; McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from an order denying appellant's RCr 11.42 motion alleging that his guilty plea was involuntary and that his counsel on the plea rendered ineffective assistance. Upon review of the record, we adjudge appellant's arguments to be without merit and, thus, affirm.

On September 15, 1998, at about 10:00 p.m., a police officer noticed appellant, Randy Stokes, leaving a liquor store and looking underage. After Stokes entered his car, the officer approached and asked for his identification. When the officer checked Stokes' identification, he found that Stokes had prior misdemeanor drug convictions and thereupon asked Stokes if he had

any drugs in the vehicle. Stokes then handed the officer a small sack of marijuana. At that point, the three other occupants of the car scrambled out of the car and fled. Stokes quickly followed suit, and in the process of fleeing the car, dropped what was later identified as 13.26 grams of crack cocaine on the floorboard. In a subsequent search of the car, a handgun was also found on the floor of the vehicle.

As a result of the incident, an information was ultimately filed against Stokes on October 14, 1998, charging him with possession of marijuana, trafficking in a controlled substance in the first degree, trafficking in a controlled substance within 1000 yards of a school, and carrying a concealed deadly weapon. On October 14, 1998, Stokes entered into a plea agreement with the Commonwealth and filed a motion to enter a guilty plea and waiver of rights. On October 19, 1998, Stokes pled guilty to trafficking in the first degree and was thereafter sentenced to ten years of supervised probation pursuant to the plea agreement. Subsequently, on April 25, 2000, Stokes pled guilty to a second charge of trafficking. Pursuant to that plea agreement, Stokes stipulated to violating the conditions of his 1998 probation. Accordingly, Stokes' probation was revoked and he was ordered to serve the ten-year sentence from 1998 consecutive with the ten-year sentence on the 2000 trafficking conviction. On February 20, 2001, Stokes filed an RCr 11.42 motion to vacate the 1998 conviction, claiming that his plea was not voluntary and that his counsel on the plea rendered

ineffective assistance. After a full evidentiary hearing on the matter, the court denied the motion. This appeal followed.

We shall first address Stokes' argument that his plea was not entered voluntarily and intelligently. "The test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Sparks v. Commonwealth, Ky. App., 721 S.W.2d 726, 727 (1986). It must be affirmatively shown in the record that the plea was voluntary. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). Whether a plea is voluntary is determined from the totality of the circumstances, including factors surrounding the plea as well as from the plea itself. Kotas v. Commonwealth, Ky., 565 S.W.2d 445 (1978).

Stokes maintains that because of his lack of education and knowledge of the legal system, his plea was not voluntary. During the plea proceedings, Stokes informed the court that he was one credit shy of completing high school. Further, during the hearing on the RCr 11.42 motion, Stokes confirmed that he could read and write. In viewing the plea proceedings, we see that Stokes spoke intelligibly and gave appropriate and coherent responses to the court's questions. There was no indication that Stokes was confused or did not understand the nature of the proceedings or anything the court explained to him. The fact that Stokes had only an 11th grade education does not automatically render his plea involuntary. See Parke v. Raley, 506 U.S. 20, 113 S. Ct. 517, 121 L. Ed. 2d 391 (1992). As to his

claim of a lack of knowledge of the legal system, there was evidence in the record that Stokes had nine prior misdemeanor charges to which he had pled guilty to at least two at the time of the plea in the instant case. Hence, Stokes cannot claim he did not have prior experience with the legal system. See Lynch v. Commonwealth, Ky. App., 610 S.W.2d 902 (1980).

Stokes next contends that his plea was not voluntary because he did not read any of the documents he signed. During the plea colloquy, Stokes answered in the affirmative when asked if he had read and understood the motion to enter a guilty plea and the waiver of rights. Hence, the record directly refutes this contention. "Absent clear and convincing evidence to the contrary, [the defendant] is bound by the representations he made during the plea colloquy." Burket v. Angelone, 208 F.3d 172, 191 (4th Cir. 2000), cert. denied, 530 U.S. 1283, 120 S. Ct. 2761, 147 L. Ed. 2d 1022 (2000).

Stokes additionally argues that his plea was involuntary because he was not informed that his conviction, as a felony, could be used to enhance subsequent felony convictions under the persistent felony offender (PFO) statute. It has been held that a plea is not rendered involuntary by the pleader's ignorance of its collateral consequences, in particular, future PFO ramifications. McGuire v. Commonwealth, Ky., 885 S.W.2d 931 (1994); see also Turner v. Commonwealth, Ky. App., 647 S.W.2d 500 (1982).

Finally, Stokes maintains that the fact that he entered his plea of guilty only five days after the information was filed

against him demonstrates that the plea could not have been voluntary. We disagree. First, it must be noted that Stokes had already appeared on the charges at least two times in district court before the information was filed against him. Hence, he had more than five days notice of the charges. Secondly, the mere fact that Stokes pled guilty a short time after the information was filed does not automatically render the plea involuntary. Everything in the record indicates that the plea was entered voluntarily and intelligently. As stated earlier, Stokes signed the motion to enter a guilty plea which specifically set forth the rights Stokes was waiving and further stated that, other than the Commonwealth's sentence recommendation, no promises or threats were made to induce the guilty plea. The motion also contained an explicit declaration that the guilty plea was "freely, knowingly, intelligently and voluntarily made." During the guilty plea, Stokes confirmed that he had read the motion to enter guilty plea and the Commonwealth's offer on a plea of guilty and that he had signed both documents voluntarily. During the plea colloquy, the court specifically informed Stokes of all of his trial-related constitutional rights. Stokes stated that he understood these rights and that by pleading guilty, he was waiving them. Stokes specifically stated that his plea was being entered willingly and voluntarily.

The trial court is in the best position to assess whether the defendant's plea is voluntary and whether there was some reluctance or misunderstanding. Centers v. Commonwealth,

Ky. App., 799 S.W.2d 51 (1990). Upon consideration of the totality of the circumstances, we cannot say that the trial court erred in finding that Stokes' guilty plea was entered voluntarily and intelligently.

Stokes' next argument is that his counsel on the guilty plea rendered ineffective assistance. Stokes contends that his counsel did not adequately investigate his case and his possible defenses and did not fully inform him of his options other than pleading guilty. In order to prevail on a claim of ineffective assistance of counsel on a guilty plea, the defendant must show that his counsel's performance was deficient relative to current professional standards and that but for that deficient performance, there is a reasonable probability that the defendant would not have pled guilty but would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985). There is strong presumption that counsel's performance constituted sound trial strategy and the defendant has the burden of proving otherwise. Moore v. Commonwealth, Ky., 983 S.W.2d 479 (1998), (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

Stokes argues that the fact that he was advised to plead guilty so soon after the information was filed proves that his counsel could not have adequately investigated his case. The amount of the time that defense counsel spends with the defendant before a plea of guilty is but one of the factors to be considered in assessing whether counsel was effective. Callahan v. Russell, 423 F.2d 450 (6th Cir. 1970). In Doughty v. Beto,

396 F.2d 128 (5th Cir. 1968), where defense counsel spent only fifteen minutes with the defendant before negotiating a plea deal, the Court found that under the circumstances, counsel spent an adequate amount of time with the defendant such that he rendered effective assistance. "[W]hatever the showing may be as to the time and facilities made available for rendering legal service, the basic inquiry remains — was the representation inadequate?" Cofield v. United States, 263 F.2d 686, 688-689 (9th Cir. 1959), reversed on other grounds, 360 U.S. 472, 79 S. Ct. 1430, 3 L. Ed. 2d 1531 (1959).

Stokes contends that his counsel conducted no investigation of the merits of his case before advising him to plead guilty. In particular, he claims that his counsel should have contacted and interviewed the other passengers in Stokes' car on the night in question to see if they could provide some mitigating evidence. However, this allegation is purely speculative. Stokes does not state what mitigating evidence the passengers could have provided that would have been beneficial to his case. A defendant must set forth in specific detail why RCr 11.42 relief is warranted. Centers v. Commonwealth, Ky. App., 799 S.W.2d 51 (1990).

Stokes also avers that had he understood that he could have presented evidence at trial that the cocaine was not his, he would not have pled guilty. He maintains that his counsel should have at least requested a probable cause hearing or filed a suppression motion "which might have divulged additional facts helpful to him in pursuing a defense." (emphasis added). Aside

from his self-serving claim that the cocaine was not his, Stokes again does not state with particularity what favorable evidence such a hearing would have elicited. Further, regardless of what evidence Stokes could have adduced relative to ownership of the cocaine, the fact remained that the police officer saw Stokes drop the cocaine when he fled the car. Hence, we cannot say that Stokes' counsel was ineffective for failing to move for a probable cause or suppression hearing to determine if there was evidence that Stokes was not in possession of the cocaine.

Stokes also claims that his counsel was deficient for failing to file a suppression motion based on the lack of probable cause for the initial stop. As stated earlier, the police officer who stopped Stokes first saw him leaving a liquor store and thought he was underage. Additionally, on the arrest warrant, the officer states that when he approached the car, he smelled the odor of marijuana. Thus, the officer clearly had reasonable suspicion of criminal activity to make an investigative stop. See Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Accordingly, Stokes' counsel was likewise not ineffective for failing to file a suppression motion based on the validity of the stop.

Stokes' final claim of ineffective assistance of counsel is that his counsel should have challenged the trafficking charge because there was insufficient evidence thereof. Stokes argues that he could not have been convicted of the first-degree trafficking in a controlled substance charge because other than the cocaine, there was no other evidence of

trafficking. Thus, he asserts he could only have been convicted of possession of cocaine or, at most, second-degree trafficking. The cocaine which was found was determined to be 13.26 grams. It has been held that the amount of a controlled substance alone can be sufficient evidence to convict a defendant of trafficking. Dawson v. Commonwealth, Ky., 756 S.W.2d 935 (1988). Further, second-degree trafficking in a controlled substance was not an option relative to the cocaine because cocaine is expressly designated as a "narcotic drug" in KRS 218A.010(15)(e), which excludes it from the definition of second-degree trafficking in KRS 218A.1413(1)(a).

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." McQueen v. Commonwealth, Ky., 721 S.W.2d 694, 700 (1986), (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066-2067.) In the instant case, Stokes' counsel made a reasonable decision recommending that Stokes plead guilty to the first-degree trafficking charge in exchange for 10 years' probation. Considering that he could have been sentenced to seventeen years' imprisonment had he been convicted of all four charges, that was a very favorable deal for Stokes. We cannot say that Stokes' counsel was ineffective for recommending that he plead guilty pursuant to that plea agreement instead of going to trial. Nor can we say there was a reasonable probability that Stokes would have ever insisted on going to trial. During the plea, Stokes indicated that he was fully satisfied with his representation, that he had no complaints about this counsel, and

that he had all the time he needed to discuss his case with counsel. Stokes took advantage of a very favorable plea offer and then consequently blew it by his own recidivous conduct.

For the reasons stated above, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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