

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002737-MR

NORMAN BRADLEY WILLIAMS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOPF, JUDGE
ACTION NO. 00-CI-001722

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUIDUGLI, HUDDLESTON AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE. Norman Bradley Williams appeals, pro se, from an opinion and order of the Jefferson Circuit Court which denied his RCr 11.42 motion. Having thoroughly reviewed the record and finding no error, we affirm¹.

In that we believe Judge Thomas Knopf's opinion and order clearly and precisely sets forth the factual background and thoroughly and properly addresses the legal principles involved, we adopt the court's opinion and order in full as follows:

¹Our review of this matter is somewhat limited in that the record on appeal did not contain any information prior to Williams's RCr 11.42 motion. The record does not contain the original indictments or any pre-trial motions or even the judgment relating to his convictions. We did, however, review the videotape recordings provided.

This matter comes before the Court on a motion by Defendant/Movant, Norman Bradley Williams, to alter, amend or vacate his sentence pursuant to RCr 11.42.

BACKGROUND SUMMARY

On August 8, 2000, Williams was indicted on the charges of Robbery I, Robbery II, and five counts of Theft by Unlawful Taking ("TBUT") under \$300 and being a Persistent Felony Offender I ("PFO"). On March 13, 2001, a jury trial was held on the severed charge of Robbery I, and Williams was found guilty of said charge. During the deliberation of the penalty phase, the Commonwealth and Williams reached an agreement whereby Williams would serve ten years for Robbery I and withdraw his not guilty plea to the remaining severed charges under the indictment and enter a plea of guilty to the following: Robbery II (five years); four counts of TBUT under \$300 (12 months per count); and one amended count of TBUT over \$300 (three years), enhanced to ten years by PFO I status, to run consecutively with the ten-year Robbery I sentence for a total of twenty years to serve. In accordance therewith, Williams was sentenced by court order of March 22, 2001.

On May 14, 2001, Williams filed a motion to alter, amend, or vacate his sentence pursuant to RCr 11.42. He filed a supplemental motion on October 11, 2001. The Commonwealth has not filed any response.

OPINION

In his RCr 11.42 motion, Williams alleges that his guilty plea was involuntary based upon ineffective assistance of counsel. Williams argues that it was improper to amend one of the counts of TBUT under \$300 (which is a Class A misdemeanor) to TBUT over \$300 (which is a Class D felony) and then enhance the three-year sentence for the TBUT over \$300 to ten years due to the PFO I charge. The PFO I charge was based on felony convictions in Case Nos. 93-CR-0001 and 89-CR-2356.

As stated in Centers v. Commonwealth, Ky.App., 799 S.W.2d 51 (1990), a guilty plea

is only valid when it is entered intelligently and voluntarily. The validity of a guilty plea must be determined from considering the totality of the circumstances surrounding the plea. Kotas v. Commonwealth, Ky., 565 S.W.2d 445 (1978).

In Sparks v. Commonwealth, Ky.App., 721 S.W.2d 726 (1987), the court stated the following:

A showing that counsel's assistance was ineffective in enabling a defendant to intelligently weigh his legal alternatives in deciding to plead guilty has two components: (1) that counsel made errors so serious that counsel's performance fell outside the wide range of professionally competent assistance; and (2) that the deficient performance so seriously affected the outcome of the plea process that, but for the errors of counsel, there is a reasonable probability that the defendant would not have pleaded guilty, but would have insisted on going to trial.

An attorney, acting in good faith and in the exercise of reasonable judgment, may recommend that a client plead guilty. Hendrickson v. Commonwealth, Ky., 450 S.W.2d 234 (1970). In this case, Williams was facing a sentence of up to twenty years on his Robbery I jury conviction. Under the plea, he received the minimum ten-year sentence on this Class B Felony. Along with this felony, Williams had another felony charge pending, i.e., Robbery II, which was a Class C Felony. Rather than enhance a Class B or Class C felony, Williams pled guilty to TBUT over \$300, a Class D felony. This was to Williams' benefit as KRS 532.080(7) provides that a person found to be a PFO I, who is presently convicted of a Class A, B, or C felony, is ineligible for parole until serving a minimum ten-year sentence. Consequently, Williams cannot show that there was a reasonable probability that he would not have taken the plea and insisted on a trial.

From the totality of the circumstances surrounding Williams' guilty plea and sentencing, the Court finds that the alleged deficiencies of counsel did not affect the plea so as to render it involuntary.

Therefore, the Court enters the following Order:

ORDER

IT IS HEREBY ORDERED AND ADJUDGED that the motion brought by Defendant/Movant, Norman Bradley Williams, to alter, amend, or vacate his sentence pursuant to RCr 11.42 is DENIED.

This is a final and appealable judgment.

DATED this 28th day of November, 2001.

Also in the court record is a motion for clarification of sentence filed by Williams on January 9, 2002. In his motion, he argues that since the PFO I conviction was attached to the class "D" felony conviction for TBUT over \$300, he is eligible for parole consideration after service of 20% of his sentence instead of 50% if it had attached to the Robbery I or Robbery II conviction. By this motion, Williams admits that he greatly benefitted from the plea agreement which he argues in this appeal resulted in great injustice to him. Obviously one cannot be greatly benefitted and at the same time suffer a great injustice from the same plea agreement. Having thoroughly reviewed this matter, we believe the trial court properly addressed the benefits Williams received based upon the recommended plea agreement. In that Williams received the same number of years of imprisonment (20 years) that he would have received upon his guilty pleas to Robbery I and Robbery II and a PFO I conviction but greatly benefitted from the plea agreement which permitted

the PFO I to attach to a class "D" felony conviction of TBUT over \$300, thus reducing his parole eligibility from 50% of time served to 20%, we agree that Williams cannot show that performance of his attorney was deficient or that he suffered prejudice due to the alleged deficient representation. See, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

For the foregoing reasons, we affirm the opinion and order entered by the Jefferson Circuit Court denying Williams's RCr 11.42 motion.

ALL CONCUR.

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