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Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000338-MR

ROBREYLL LESHAWN WATKINS APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 02-CR-00030-001

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: HENRY, JOHNSON, AND SCHRODER, JUDGES.

JOHNSON, JUDGE: Robreyll LeShawn Watkins has appealed from the January 19, 2005, order of the Fayette Circuit Court which denied his motion to vacate or to correct the trial court's final judgment and sentence of imprisonment pursuant to RCr[1] 11.42, without holding an evidentiary hearing. Having concluded that the trial court did not err in denying Watkins's claims, we affirm.

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[1] Kentucky Rules of Criminal Procedure.

On January 14, 2002, Watkins was indicted by a Fayette County grand jury on one count of criminal syndication to wit: robbery in the first degree,[2] and four counts of robbery in the first degree.[3] The charges arose from incidents occurring on October 19, 2001, and November 1, 2001, where Watkins and six co-defendants robbed two hotels while armed with handguns. It is undisputed that Watkins confessed and implicated his six co-defendants and that the crimes would not have been solved without Watkins's confession and cooperation.

Pursuant to a plea agreement with the Commonwealth, Watkins entered a guilty plea on June 7, 2002. In return for his guilty plea, the Commonwealth agreed to dismiss the count of criminal syndication, and to amend two of the four counts of robbery to criminal facilitation.[4] The Commonwealth recommended five-year sentences for each count of criminal facilitation and ten-year sentences on each remaining count of robbery in the first degree. The trial court accepted Watkins's plea, but withheld sentencing until October 2002 so that Watkins could testify against his co-defendants as per his agreement with the Commonwealth.[5]

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[2] Kentucky Revised Statutes (KRS) 506.120 and KRS 515.020.

[3] KRS 515.020.

[4] KRS 506.080.

[5] There is no indication in the record on appeal if Watkins ever testified against his co-defendants.

Sometime following the entry of his guilty plea, Watkins was inadvertently released from custody after he completed a sentence in an unrelated case. He failed to appear for sentencing on October 18, 2002, and a warrant was issued for his arrest. Final judgment and sentence was entered against Watkins on December 10, 2002, and he was sentenced to five years on each count of criminal facilitation and ten years on each count of robbery in the first degree, with all sentences to run consecutively for a total sentence of 30 years.[6]

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[6] In sentencing Watkins, the trial court explained that it did not hold the fact that Watkins had failed to appear for sentencing against him. The trial court stated:

> Mr. Watkins, I haven't held that against you. I mean, you got released; you knew you probably had to come back to court. But, I think that almost anybody in your position would have done the same thing. I'm going to sentence you just like I would if you'd been in court the day you were supposed to be, which is consistent with the types of offenses that have been committed. I'm not making anything any worse because you took off, because I think it was aided by a mistake of the system. But these were bad robberies, and I have already sentenced your co-defendant, and I will be sentencing you accordingly. You know, it's a mistake for people to believe that because you assist the police in some way, that when you get down to what your recommendation is that you get even more credit because your assistance to the police goes to the recommendation. And, in this case they did amend two of the counts against you to lesser offenses. That's what you get for cooperation is an amended offense. Now, that leaves, though, two counts for these robberies, and the court is going to sentence you consistent to the other defendant in the case, to five years each on counts two and three and ten years each on counts four and five all to run consecutive to each other because of the nature of the offenses, and remand you to custody.

On May 3, 2004, Watkins filed a pro se motion to vacate or to correct his sentence pursuant to RCr 11.42, as well as a motion for appointment of counsel and a motion for an evidentiary hearing. The trial court appointed counsel to represent Watkins and counsel filed a supplement to Watkins's RCr 11.42 motion. The Commonwealth filed its response in opposition on October 26, 2004. On January 19, 2005, the trial court denied Watkins's RCr 11.42 motion, without holding an evidentiary hearing. This appeal followed.

Watkins argues on appeal: (1) that his plea was not entered knowingly, voluntarily, or intelligently; (2) that trial counsel was ineffective in advising him to plead guilty; and (3) that trial counsel provided ineffective assistance during sentencing. In addition to challenging the trial court's rejection of his various claims, Watkins contends the trial court erred in failing to conduct an evidentiary hearing on his RCr 11.42 motion.

In order to be constitutionally valid, a guilty plea must be entered knowingly, voluntarily, and intelligently.[7] RCr 8.08 requires a trial court to determine at the time of the guilty plea "that the plea is made voluntarily with

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[7] Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Tollett v. Henderson, 411 U.S. 258, 266-67; 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973); Haight v. Commonwealth, 760 S.W.2d 84, 88 (Ky. 1988); Woodall v. Commonwealth, 63 S.W.3d 104, 132 (Ky. 2002).

understanding of the nature of the charge."[8] "[T]he validity of a guilty plea is determined . . . from the totality of the circumstances surrounding it."[9]

We have reviewed the guilty plea colloquy, and the trial judge was very thorough in advising Watkins of his constitutional rights and allowing Watkins to speak. Additionally, the record contains a preprinted form styled "Petition to Enter Plea of Guilty." Watkins signed the form indicating his acknowledgment and understanding of the following statements: "I know that by pleading 'Guilty' I waive my constitutional rights and any other rights stated in this document, and being fully aware of the consequences of pleading 'Guilty', I wish to plead 'Guilty'[,]" and "I declare that I offer my plea of 'Guilty' freely and voluntarily and of my own accord and with full understanding of all the matters set forth in the indictment and in this petition[.]"

On June 7, 2003, when Watkins entered his plea of guilty, the trial court carefully reviewed with him and his attorney the charges for which he was indicted, the possible penalties he faced under those charges, and the sentences

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[8] See James v. Cain, 56 F.3d 662, 666 (5th Cir. 1995) (stating that "[a] guilty plea is invalid if the defendant does not understand the nature of the constitutional protection that he is waiving or if he has such an incomplete understanding of the charges against him that his plea cannot stand as an admission of guilty" [citations omitted]). See also Bronk v. Commonwealth, 58 S.W.3d 482, 486 (Ky. 2001).

[9] Kotas v. Commonwealth, 565 S.W.2d 445, 447 (Ky. 1978) (citing Brady v. United States, 397 U.S. 742, 749, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970)).

recommended by the Commonwealth. Watkins participated in an exhaustive plea colloquy in which he assured the trial court that he had not been threatened, forced, or coerced to plead guilty. He also answered in the affirmative when he was asked if his attorney had kept him fully informed and if he understood the charges against him and the possible defenses. He acknowledged that he was aware of the constitutional rights he was giving up by pleading guilty. Clearly, the trial court engaged in sufficient dialogue with Watkins to ensure his understanding of the rights he was waiving.[10]

The United States Supreme Court set out the standard for ineffective assistance of counsel in Strickland v. Washington,[11] as follows:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

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[10] See Centers v. Commonwealth, 799 S.W.2d 51 (Ky.App. 1990).

[11] 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

This standard also applies to the guilty plea process.[12] "[T]he voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases'" [citations omitted].[13] When reviewing trial counsel's performance, this Court must be highly deferential and we should not usurp or second-guess counsel's trial strategy.[14] "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy'" [citations omitted].[15] "[I]n order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[16]

Watkins argues that trial counsel coerced him to plead guilty by promising that he would be sentenced to a maximum of 15 years, and that based on misstatements by the trial court he

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[12] Hill v. Lockhart, 474 U.S. 52, 57, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

[13] Id. 474 U.S. at 56.

[14] Strickland, 466 U.S. at 689.

[15] Id.

[16] Hill, 474 U.S. at 59.

was not sentenced in accordance with his co-defendants. We find these arguments to be without merit.[17]

The record reveals that Watkins entered a plea of guilty to the Commonwealth's recommendation, which stated as follows:

> Count 1 – Dismissed
> Count 2 – Amend to Facilitation / 5 yrs
> Count 3 – Amend to Facilitation / 5 yrs
> Count 4 – Guilty as Charged / 10 yrs
> Count 5 – Guilty as Charged / 10 yrs

The Commonwealth did not make a recommendation as to whether the sentences should be served concurrently or consecutively with each other, and it was within the trial court's discretion, based on the totality of the circumstances surrounding the charges, to run the sentences consecutively for a total of 30 years.[18]

Only two of Watkins's co-defendants were originally charged with the same exact counts as Watkins. While these two co-defendants accepted the same plea offer, their plea bargain was different than the agreement that Watkins reached with the Commonwealth. Watkins pled guilty to two amended charges of criminal facilitation, to which the Commonwealth recommended

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[17] We note that despite his statements to the contrary, these issues were not properly preserved by Watkins for our review since he did not file a motion to alter, amend, or vacate the judgment and sentence. See CR 59.05.

[18] See KRS 532.110 (stating that "[w]hen multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime . . . the multiple sentences shall run concurrently or consecutively as the court shall determine at the time of sentence[.]"

sentences of five years each, as well as the two remaining charges of robbery in the first degree. Watkins co-defendants only pled guilty to two amended charges of robbery in the second degree. All other charges were dismissed. There is no evidence to support that Watkins did not know what charges he was pleading guilty to or the recommended sentences that he could serve. We agree with the Commonwealth that it is highly unlikely that the trial court intended for the term "consistent" to mean that Watkins would be sentenced to an identical amount of time. In fact, the trial court expressed a desire to sentence Watkins "consistent with the types of offenses" he committed. Since Watkins could have received a maximum sentence of 50 years for criminal facilitation and robbery in the first degree but only received a sentence of 30 years, we cannot conclude that he was sentenced inconsistently. Without some evidence to support his claims, they amount to nothing more than bare allegations, which do not entitle Watkins to an evidentiary hearing.[19]

Finally, Watkins contends that the trial court erred in denying his RCr 11.42 motion without holding an evidentiary hearing. The trial court is not required to hold a hearing when the record clearly refutes the allegations in a petition to

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[19] Brooks v. Commonwealth, 447 S.W.2d 614, 617 (Ky. 1969).

vacate a sentence pursuant to RCr 11.42.[20] Watkins has presented no evidence that would overcome the high burden placed upon a defendant who unconditionally pleads guilty and subsequently challenges his conviction. In addition, the record reflects the lengthy process by which the trial court accepted Watkins's plea as knowingly, intelligently, and voluntarily entered. Consequently, the trial court was under no obligation to hold an evidentiary hearing prior to denying Watkins's motion for post-conviction relief.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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[20] Fraser v. Commonwealth, 59 S.W.3d 448 (Ky. 2001).