

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001416-MR

PAUL POWERS

APPELLANT

v. APPEAL FROM BUTLER CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 02-CR-00148

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DIXON AND TAYLOR, JUDGES; KNOPF,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Paul Powers brings this *pro se* appeal from an April 28, 2005, order of the Butler Circuit Court summarily denying his Ky. R. Crim. P. (RCr) 11.42 motion to vacate his ten-year sentence of imprisonment entered upon a guilty plea to operating a motor vehicle on a suspended license for DUI (third offense) and being a persistent felony offender in the first

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

degree (Kentucky Revised Statutes (KRS) 189A.090 and KRS 532.080). We affirm.

In 2002, appellant was indicted by a Butler County Grand Jury upon one count of operating a motor vehicle on a suspended license (third offense) and one count of being a persistent felony offender in the first degree. Appellant ultimately entered a guilty plea to the above charges.

On March 16, 2005, appellant filed a motion to vacate his sentence pursuant to RCr 11.42. The circuit court denied the motion without an evidentiary hearing by order entered April 28, 2005. This appeal follows.

Appellant has raised numerous allegations of ineffective assistance of trial counsel. To prevail upon a claim of ineffective assistance of counsel, movant must demonstrate that counsel's performance was deficient and that such deficiency was prejudicial. Strickland v. Washington, 466 U.S. 668 (Ky. 1984). It is well-established that a motion made pursuant to RCr 11.42 must specifically state the grounds for relief and the facts to support those grounds. Stanford v. Commonwealth, 854 S.W.2d 742 (Ky. 1993). An RCr 11.42 motion is properly denied without an evidentiary hearing if the allegations raised are conclusively refuted upon the face of the record. Baze v. Commonwealth, 23 S.W.3d 619 (Ky. 2000). Mere

conclusory allegations of error do not require an evidentiary hearing. Wedding v. Commonwealth, 468 S.W.2d 273 (Ky. 1971).

In the case *sub judice*, appellant has not demonstrated entitlement to relief. Appellant filed a *pro se* brief and raised issues that are difficult to discern as best. Even applying the utmost efforts in interpreting his brief, the issues therein are conclusory and lack any basis in fact. Appellant, likewise, failed to prove prejudice from the alleged errors of his trial counsel nor that he was under some type of duress created by the prosecutor at the time of his guilty plea. Accordingly, we conclude that appellant's allegations of ineffective assistance of trial counsel are refuted upon the face of the record. See Baze, 23 S.W.3d 619. As such, the circuit court did not err by summarily denying appellant's RCr 11.42 motion.

For the foregoing reasons, the order of the Butler Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paul Powers, *Pro Se*
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BRIEF FOR APPELLEE:

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