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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001935-MR

RANDY HAMBLIN — APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE JERRY D. WINCHESTER, JUDGE
ACTION NO. 06-CR-00027

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MOORE, NICKELL AND STUMBO, JUDGES.

NICKELL, JUDGE: Appellant Randy Hamblin ("Hamblin") appeals from the order of the Whitley Circuit Court denying his RCr[1] 11.42 motion as duplicative. We affirm.

During a domestic dispute on December 3, 2005, Hamblin discharged a shotgun in the direction of his partner, grazing her neck with buckshot. On

[1] Kentucky Rules of Criminal Procedure.

February 13, 2006, a grand jury indicted Hamblin charging him with criminal attempt[2] to commit murder,[3] and assault in the first degree.[4] On September 15, 2006, Hamblin accepted a plea agreement and pleaded guilty to criminal attempt to commit murder. In return, the Commonwealth dropped the assault charge, stipulated the attempted murder resulted in non-serious physical injury, and agreed to recommend a sentence of fifteen years imprisonment. On September 16, 2006, the circuit court entered judgment in accordance with the Commonwealth's recommendation.

On May 7, 2007, Hamblin filed a motion to vacate judgment under RCr 11.42. The motion claimed counsel's assistance was ineffective because counsel: (1) failed to advise him of all available defenses; (2) erroneously applied the facts to the law; and (3) advised him to plead guilty to a crime the Commonwealth could not prove. The court denied Hamblin's 11.42 motion, noting that during the *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) hearing Hamblin stated his plea was knowing and voluntary, he was satisfied with counsel's performance and he knew what he was doing. Hamblin did not appeal.

On September 10, 2007, Hamblin filed his second RCr 11.42 motion. This time he alleged counsel's assistance was ineffective because counsel failed to:

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[2] Kentucky Revised Statutes (KRS) 506.010.

[3] KRS 507.020.

[4] KRS 508.010.

(1) advise the trial court of alleged police misconduct; (2) prepare an "attempt defense"; and (3) preserve errors for appeal. On September 11, 2007, the circuit court denied the successive RCr 11.142 motion as duplicative. This appeal follows.

On appeal Hamblin claims: (1) his guilty plea was coerced; (2) a conspiracy to hide a police officer's misconduct invalidated his plea; and (3) the court abused its discretion by denying his motion for an evidentiary hearing.

Because Hamblin's 11.42 motion was denied without an evidentiary hearing, our review is "limited to whether the motion on its face states grounds that are not conclusively refuted by the record and which, if true, would invalidate the conviction." *Fuston v. Commonwealth*, 217 S.W.3d 892, 895 (Ky.App. 2007). As a reviewing court, we defer to the findings of fact and determinations of credibility made by the trial court. *Commonwealth v. Bussell*, 226 S.W.3d 96, 99 (Ky. 2007). Unless clear error is apparent, we will not disturb the trial court's findings. *Id.* However, we review application of the law *de novo*. *Carroll v. Meredith,* 59 S.W.3d 484, 489 (Ky.App. 2001).

Hamblin's first contention is counsel coerced his plea, but that claim is not properly before us. Coercion means "to force to act or think in a certain way by use of pressure, threats, or intimidation; compel."[5] After reviewing Hamblin's first RCr 11.42 motion, the trial court determined Hamblin's plea was knowing and voluntary – it was not coerced. Thus, the court has already rejected the claim and

[5] *The American Heritage Dictionary of the English Language*, (4th ed. 2006).

the doctrine of *res judicata* precludes Hamblin from taking a "second bite at the apple." *Alvey v. Commmonwealth*, 648 S.W.2d 858, 860 (Ky. 1983); *Gregory v. Commonwealth,* 610 S.W.2d 598, 600 (Ky. 1980).

Similarly, Hamblin's second contention is procedurally improper. Hamblin alleges counsel and the Commonwealth conspired to conceal a "drugs for sex" relationship between a police officer and the victim, and that their alleged relationship tainted the charges against him. However, within his motion and supporting memorandum, Hamblin stipulates the victim told him of the relationship on the night he attempted to kill her and he rejected the Commonwealth's first plea offer because he wanted to expose the relationship at trial. RCr 11.42(3) states in relevant part: "The motion shall state all grounds for holding the sentence invalid of which the movant has knowledge." It is well established that a claim made in a successive RCr 11.42 motion, which could have been, but was not, presented in a prior proceeding, will not be considered by this Court. *Butler v. Commonwealth*, 473 S.W.2d 108, 109 (Ky. 1971); *Case v. Commonwealth*, 467 S.W.2d 367, 369 (Ky. 1971); *Hampton v. Commonwealth*, 454 S.W.2d 672, 673 (Ky. 1970). Hamblin's pleadings establish he knew of the potential issue prior to pleading guilty. Thus, he could have, and should have, presented the issue to the trial court in his first RCr 11.42 motion. As a result, we are now precluded from considering his claim. *Id.*

Hamblin finally contends the trial court abused its discretion by denying his motion for an evidentiary hearing. However, Hamblin was not

automatically entitled to a hearing. *Stanford v. Commonwealth*, 854 S.W.2d 742, 744 (Ky. 1993). If the record refutes his claims of error, there is no reason to hold a hearing. *Id.* at 743 (citing *Glass v. Commonwealth*, 474 S.W.2d 400, 401, (Ky. 1971)). Here, the record refuted Hamblin's first two allegations as being procedurally improper. Thus, the trial court properly determined no evidentiary hearing was necessary. *Id.*

For the forgoing reasons, we affirm the opinion of the Whitley Circuit Court.

ALL CONCUR.

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