

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001568-MR

COREY DEMETRIUS HARDIN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 97-CR-002390

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: MOORE AND THOMPSON, JUDGES; HENRY,¹ SENIOR JUDGE.

THOMPSON, JUDGE: Corey Demetrius Hardin appeals from an order of the Jefferson Circuit Court denying his motion for post-conviction relief pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. For the reasons set forth herein, we affirm.

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In September 1997, Hardin was indicted for first-degree robbery and first-degree assault. The two-count indictment stemmed from an incident wherein Hardin entered the residence of Darrell Taylor and demanded money. When Taylor refused, the two men began struggling before Taylor escaped through a bathroom window. Hardin then fired several shots at Taylor, striking him once in the shoulder. Subsequently, after Taylor identified him, Hardin was arrested for robbery and assault.

Following his arrest, Hardin's two attorneys successfully negotiated a plea agreement with the Commonwealth. On May 26, 1998, Hardin and his attorneys appeared in court for the acceptance of the guilty plea. At the start of the hearing, Hardin's attorneys asked the court to postpone acceptance of the guilty plea for ninety days. His attorneys stated that the delay would permit them to resolve Hardin's federal charges in an advantageous fashion before the entry of his state conviction.

Having previously granted two continuances, the trial court refused the request and stated that it was ready to accept the plea or to set the case for trial. After a brief recess, in anticipation of trial, Hardin's attorneys and the prosecutor litigated two matters, an evidentiary issue and an alleged conflict of interest. After these matters were resolved, Hardin informed the trial court that he would plead guilty if final sentencing was postponed until the resolution of his federal charges. After this request was denied, the case was recessed to the following morning.

When court resumed, Hardin entered a guilty plea to the amended charge of second-degree assault and the robbery charge was dismissed. Several weeks later, the trial court sentenced Hardin to ten-years' imprisonment.

Thereafter, on April 21, 2000, Hardin filed a motion for post-conviction relief pursuant to RCr 11.42, alleging ineffective assistance of counsel. After reviewing the motion, the trial court vacated Hardin's conviction on the basis that Hardin's attorneys were prevented from providing effective assistance of counsel due to the predecessor judge's combative demeanor toward Hardin's attorneys.

After the Commonwealth appealed, in Case No. 2001-CA-000868-MR, this Court reversed the trial court after concluding that the predecessor judge's demeanor did not render Hardin's attorneys ineffective. Further, we stated, in pertinent part, the following:

In summary, Hardin was originally charged with two violent felonies and was facing a possible sentence of forty-years' imprisonment if convicted. After numerous jury trial dates had been rescheduled, Hardin appeared in court on May 26, 1998, represented by two attorneys whom he retained, and expressed a desire to plead guilty. The Commonwealth's plea offer allowed him to plead guilty to only one amended felony charge and serve a term of ten-years' imprisonment. We believe that the evidence does not support the successor trial court's decision that Hardin was forced to plead guilty due to the predecessor judge's harsh demeanor. Hardin has failed to demonstrate how his guilty plea was unknowing, involuntary or unintelligent. Consequently, the successor trial court erred in vacating his conviction.

On remand, after conducting an extensive evidentiary hearing, the trial court issued an order denying Hardin's motion for post-conviction relief. The trial court found

that Hardin's guilty plea was intelligently and voluntarily made. This appeal followed.

Hardin's sole contention is that his guilty plea was not knowingly, voluntarily, and intelligently made as required by the United States Constitution. Contending that the trial court's demeaning posture toward his two attorneys caused him to lose confidence in them, Hardin argues that he was forced to plead guilty because he feared that his attorneys could not effectively represent him. We disagree.

The standard of review for claims of ineffective assistance of counsel was established in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The *Strickland* standard, however, is modified when a defendant waives a jury trial and pleads guilty to a criminal offense. Under the modified standard, a defendant can establish ineffective assistance of counsel by showing: (1) that defense counsel's performance fell outside the wide range of professionally competent assistance; and (2) that defense counsel's deficient performance created a reasonable probability that the defendant would not have pled guilty but would have insisted on going to trial absent counsel's deficient performance. *Sparks v. Commonwealth*, 721 S.W.2d 726, 727-28 (Ky.App. 1986).

A reviewing court must focus on the totality of the evidence before the judge when assessing the performance of defense counsel and must presume that counsel rendered effective assistance of counsel. *Haight v. Commonwealth*, 41 S.W.3d 436, 441-42 (Ky. 2001). An attorney's performance is not judged in a

vacuum but is judged by the degree that counsel's performance deviates from the quality of representation customarily provided by the legal profession. *Centers v. Commonwealth*, 799 S.W.2d 51, 55 (Ky.App. 1990). Finally, in reviewing ineffective assistance claims, the solemn declarations in open court of a defendant and his defense counsel carry a strong presumption of veracity. *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977).

Hardin's claim that his guilty plea was not knowingly, voluntarily, and intelligently made is refuted by the record. During his evidentiary hearing, Hardin testified that he understood that he could have chosen a jury trial rather than accept the plea bargain. He further testified that he answered truthfully during his plea colloquy with the trial court. Additionally, after acknowledging that he had counseled and observed Hardin throughout the criminal proceedings, one of Hardin's defense attorneys testified that his plea was made voluntarily, knowingly, and intelligently. Accordingly, we conclude that Hardin's guilty plea was constitutionally valid.

In addition to testimony, Hardin's two charged crimes, robbery and burglary, both in the first degree, carried the potential of a forty-year sentence. By pleading guilty, Hardin avoided the possibility of a forty-year sentence and accepted a substantially reduced sentence, ten years. Although Hardin contends that he would have rejected the plea bargain absent counsel error, the evidence in the record, particularly his attorney's testimony that the prosecution's physical

evidence was strong and contradicted Hardin's statements, was sufficient to support a conviction and made the prospect of a forty-year sentence a harsh reality.

Considering these facts, even if counsel had made serious errors, Hardin has failed to prove that his counsel's performance prejudiced his case. Stated differently, even if we assume deficient performance, there was no reasonable probability that Hardin would have rejected his plea and insisted on going to trial.

For the foregoing reasons, the order of the Jefferson Circuit Court denying Hardin's motion for post-conviction relief is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Brian Thomas Ruff
Assistant Public Advocate
Department of Public Advocacy
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Todd D. Ferguson
Assistant Attorney General
Frankfort, Kentucky