

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000047-MR

RANDY SPRINKLES

APPELLANT

v. APPEAL FROM KNOX CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 03-CR-00120

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MOORE AND NICKELL, JUDGES; HARRIS,¹ SENIOR JUDGE.

HARRIS, SENIOR JUDGE: Randy Sprinkles appeals from a Knox Circuit Court order denying without a hearing his motion to vacate his conviction and sentence under Kentucky Rules of Criminal Procedure (RCr) 11.42. On appeal, Sprinkles alleges the following grounds for his ineffective assistance of counsel claim: (1)

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

Counsel failed to investigate the weight of the Commonwealth's evidence and potential defenses; (2) Counsel coerced Sprinkles to take a plea agreement; (3) Counsel allowed Sprinkles to plead guilty to an increased charge of first-degree rape; (4) Counsel rushed Sprinkles's case in order to handle other cases; and (5) Counsel failed to request additional DNA testing. In addition to these claims, Sprinkles challenges the trial court's denial of his requests for appointment of counsel and for an evidentiary hearing. Finding no error in the trial court's decisions, we affirm the Knox Circuit Court's order.

On May 23, 2003, Sprinkles had sexual intercourse with S.N.B., a thirteen-year-old girl. On that date, S.N.B. spent the night with H.S., Sprinkles' eleven-year-old stepdaughter. S.N.B. told police that Sprinkles gave both girls a pill to help them sleep. After she passed out, S.N.B. awoke to find Sprinkles penetrating her. About a month later, S.N.B. told her mother what happened with Sprinkles. Her mother took S.N.B. to the hospital where she learned that she was pregnant.

The police interviewed Sprinkles on June 24, 2003. He confessed to having sexual intercourse with S.N.B. but denied providing her any type of pill or other drug, and he insisted that the intercourse was consensual. Instead, Sprinkles claimed that S.N.B. brought marijuana and pills to the sleepover. Sprinkles said that S.N.B. used the drugs and came to his room in the middle of the night, took off her pants, and got on top of him. H.S.'s statement to police supported Sprinkles' statement. At the conclusion of his interview, Sprinkles was arrested without a

warrant and charged with second-degree rape due to S.N.B. being under the age of fourteen. KRS 510.050.

On August 8, 2003, in light of S.N.B.'s allegation that Sprinkles gave her a pill, the Knox County grand jury indicted Sprinkles on a charge of first-degree rape. KRS 510.040 (victim physically helpless and use of forcible compulsion.) On April 30, 2004, Sprinkles pled guilty to first-degree rape in exchange for the Commonwealth's offer of ten years' imprisonment. He was sentenced on May 5, 2004. His RCr 11.42 motion was filed on June 4, 2007, and denied by the trial court without a hearing on August 9, 2007. This appeal follows.

I. Ineffective Assistance of Counsel

“A guilty plea is valid only when it is entered intelligently and voluntarily.” *Bronk v. Commonwealth*, 58 S.W.3d 482, 486 (Ky. 2001). Because a guilty plea taken with ineffective counsel may not meet that standard, “[a] guilty plea is open to attack on the ground that counsel did not provide the defendant with reasonably competent advice.” *Rodriguez v. Commonwealth*, 87 S.W.3d 8, 10 (Ky. 2002) (internal quotations omitted).

Sprinkles claims that his conviction and sentence should have been set aside because his guilty plea was a product of ineffective assistance of counsel. Sprinkles argues that the test for ineffective assistance of counsel should be whether the defendant is satisfied with the agreement or sentence. His analysis is incorrect. Our courts have long held that trial counsel's performance is presumed competent unless the petitioner proves that counsel was deficient and that the

deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). With respect to a guilty plea, the movant must also show that the deficient performance was so serious that, but for the counsel's ineffective representation, there is a reasonable probability that the defendant would not have pled guilty. *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985).

First, Sprinkles argues that trial counsel's performance was deficient because he failed to investigate whether the Commonwealth's evidence supported a first-degree rape charge² and whether any potential defenses were available. Sprinkles was entitled to competent representation, including reasonable investigation of all potential defenses. *Strickland*, 466 U.S. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.* Unless Sprinkles shows that his defense counsel made errors so serious that counsel's performance fell outside the wide range of professionally competent assistance, it will be deemed competent. *Id.* at 687.

Based upon Sprinkle's lack of specificity, we decline to find that trial counsel's actions were unreasonable. Sprinkles failed to specifically identify any

² Evidently Sprinkles labors under a misconception that his trial counsel had the power to control the Commonwealth's grand jury presentment and the grand jury's decision to indict him on a higher charge than the charge on which he was originally arrested.

defenses or evidence that his counsel failed to investigate.³ Sprinkles also failed to articulate how he was prejudiced by this failure. In light of Sprinkles' confession, it is unrealistic to suppose that he would not have pled guilty but for trial counsel's failure to investigate.

Next, Sprinkles alleges that his trial counsel coerced his guilty plea. Sprinkles, however, did not claim duress or specify how he was pressured. Instead, he only claims that trial counsel encouraged him to accept the agreement. The Kentucky Supreme Court held that an attorney's advice to his client to plead guilty is not any indication that the attorney rendered ineffective assistance. *Beecham v. Commonwealth*, 657 S.W.2d 234, 236-37 (Ky. 1983). Since encouragement is Sprinkles' only claim of coercion, his claim is without merit.

Sprinkles also claims that his trial counsel was ineffective because he allowed Sprinkles to plead guilty to the increased charge of first-degree rape. Once again, Sprinkles failed to show that the plea was not voluntarily entered. In fact, our review of the plea documents and plea colloquy indicate that Sprinkles voluntarily, knowingly, and intelligently entered the plea.

Next, Sprinkles claims that his counsel was ineffective due to a conflict. Although Sprinkles describes this issue as a conflict, he claims that his counsel encouraged him to plead guilty so counsel could conclude Sprinkles' case and move on to other duties. The record refutes this argument. Sprinkles was

³ Sprinkles fails to recognize that the testimony of S.N.B. at trial, if it were consistent with her statement to the police, would suffice to support a conviction for first-degree rape even if it were contradicted by other witnesses. *Clements v. Commonwealth*, 384 S.W.2d 299, 301 (Ky. 1964).

arrested in June 2003. He was not sentenced until May 2004. During that time, there were at least three pretrial conferences. There is no evidence that this case was rushed in any way.

Next, Sprinkles argues that trial counsel should have requested that DNA tests be performed on S.N.B. to determine if she had sexual intercourse with any other men. Although Sprinkles was entitled to a reasonable investigation, we decline to find that counsel was required to embark on a wild goose chase that would be unlikely to help his case. Sprinkles confessed to having sexual intercourse with a thirteen-year-old girl. Whether she had sexual intercourse with other men does not change the status of his crime. Indeed, it is highly likely that the so-called Rape Shield Law, Kentucky Rules of Evidence (KRE) 412, would render such evidence inadmissible at trial in any event. Therefore, we find no error in the trial court's rejection of this claim of ineffective assistance on the part of trial counsel.

II. Procedural Claims

Sprinkles claims that the trial court erred by failing to grant him an evidentiary hearing on his RCr 11.42 motion for relief. We disagree. Trial courts are not required to grant evidentiary hearings on RCr 11.42 motions unless the defendant's motion raises an issue of fact that cannot be determined on the face of the record. *Stanford v. Commonwealth*, 854 S.W.2d 742, 743-44 (Ky. 1993). None of the issues raised by Sprinkles meet that standard. Therefore, we hold that the trial court correctly denied Sprinkles' motion.

Sprinkles also claims that the trial court erred by denying his request for appointed counsel for the RCr 11.42 proceedings. A trial court, however, is only required to appoint counsel when an evidentiary hearing is required, the defendant is indigent, and the defendant has specifically requested, in writing, that counsel be appointed. *Fraser v. Commonwealth*, 59 S.W.3d 448, 453 (Ky. 2001). Since an evidentiary hearing was not required, we hold that Sprinkles was not entitled to appointed counsel.

Finally, Sprinkles claims that the trial court erred by denying his motion to proceed *in forma pauperis*. Although Sprinkles filed an affidavit of indigency, the veracity of the affidavit was called into question by a document filed by the Kentucky State Reformatory. The document reflected that Sprinkles' prison account had a balance of \$1,048.12. Further, the document stated that \$2,179.15 had been deposited within the previous six months. In light of his prison account, we hold that the trial court had sufficient evidence on which to conclude that Sprinkles was not indigent and was not entitled to proceed *in forma pauperis*.

Accordingly, the order of the Knox Circuit Court denying Sprinkles' RCr 11.42 motion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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