

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-000852-MR

JOHN LACEY ADKINS

APPELLANT

v.

APPEAL FROM FLEMING CIRCUIT COURT  
HONORABLE LEWIS D. NICHOLLS, JUDGE  
ACTION NO. 02-CR-00006

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; ACREE, JUDGE; BUCKINGHAM,<sup>1</sup>  
SENIOR JUDGE.

ACREE, JUDGE: John Adkins appeals, *pro se*, from an order of the Fleming

Circuit Court denying his motion for relief pursuant to Kentucky Rule of Criminal

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<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute 21.580.

Procedure (RCr) 11.42. Adkins alleges trial counsel's inadequate preparation rendered his guilty plea involuntary. We disagree.

Adkins was accused of sexually abusing two of his girlfriend's daughters and of providing the older child with marijuana. The victims were aged six and fourteen when the older child informed her grandparents of the abuse and drug use. After a criminal investigation, Adkins was indicted on two counts of first-degree sodomy, and one count each of unlawful transaction with a minor in the first degree, unlawful transaction with a minor in the second degree, and being a persistent felony offender in the first degree. Adkins' girlfriend was also indicted on charges relating to the offenses committed against her children. Counsel was appointed to represent Adkins. Adkins' counsel negotiated the dismissal of the persistent felony offender charge and the amendment of the two first-degree sodomy charges to one count of first-degree sexual abuse and one count of sexual misconduct. Adkins pleaded guilty to the amended charges as well as to the original charges of unlawful transaction with a minor in the first and second degree and was sentenced to a total of fifteen years.

After he began serving his sentence, Adkins filed a motion for RCr 11.42 relief. He claimed trial counsel rendered ineffective assistance by failing to conduct a proper investigation and by failing to subpoena multiple witnesses to testify on his behalf. After a second counsel was appointed to supplement Adkins'

motion, he also claimed that trial counsel improperly represented his co-defendant at sentencing without obtaining a conflict of interest waiver from Adkins. The trial court denied his motion without a hearing. This appeal followed.

In order to prevail on a claim of ineffective assistance, Adkins is required to show that counsel made errors outside the professional norms for legal representation and, further, that he was prejudiced by those errors. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Further, since Adkins entered a guilty plea, he must prove that, but for counsel's errors, there is a reasonable chance that he would have elected to go to trial instead of entering a guilty plea. *Hill v. Lockhart*, 474 U.S. 52, 57, 103 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Adkins first argues that his trial counsel failed to adequately investigate the facts of his case prior to advising him to plead guilty to the amended indictment. However, his only argument in support of this allegation is that his attorney failed to request dismissal of the charges against him after the Commonwealth's Attorney provided twenty-three pages of discovery materials less than five days prior to the date set for trial. The record indicates otherwise. Upon receipt of the discovery materials, counsel for Adkins' co-defendant filed a motion to dismiss the charges against her. Adkins' counsel filed a notice joining in the co-defendant's motion for dismissal with prejudice or, in the alternative, a request for a continuance. (TR, Volume II, pp. 154-158). Although the motion

was overruled, Adkins cannot now be heard to complain that his trial counsel failed to seek dismissal of the charges against him.

Adkins next claims that his trial counsel was ineffective when she failed to subpoena eight particular witnesses to testify on his behalf. As the trial court noted, Adkins' motion failed to provide any information about the subject matter of the witnesses' testimony. The rule requires a person seeking post-conviction relief to "state specifically the grounds on which the sentence is being challenged and the facts on which the movant relies in support of such grounds." RCr 11.42(2). Failure to present more than bare allegations in an RCr 11.42 motion is grounds for summary dismissal. *Stanford v. Commonwealth*, 854 S.W.2d 742, 748 (Ky. 1993). The trial court committed no error in denying Adkins' request for relief on these grounds without a hearing.

Finally, Adkins contends that his trial counsel rendered ineffective assistance when she stood in for his co-defendant's attorney at final sentencing. Adkins was sentenced in accordance with the terms of his plea bargain. Several minutes later, the trial court called his co-defendant to appear for sentencing. At that point, Adkins' counsel advised the court that she had been asked to stand in for the co-defendant's attorney who was unable to be present in court. Adkins' counsel had obtained a waiver of conflict of interest from her client's co-defendant allowing dual representation for the final sentencing. Although no waiver was sought from Adkins, he was present in court at the time and raised no objection. The trial court found that since Adkins had already been sentenced in accordance

with the terms of the plea bargain, the outcome of his case was unaffected. We agree. Absent a showing of prejudice, Adkins fails to prove that he was not afforded effective representation by his trial counsel. *Strickland*, 466 U.S. at 687.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

John Lacey Adkins, *Pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
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