

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000563-MR

RONALD LAYTON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE FREDERIC COWAN, JUDGE
ACTION NO. 05-CR-003344

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON AND VANMETER, JUDGES; LAMBERT,¹ SENIOR
JUDGE.

DIXON, JUDGE: Ronald I. Layton, *pro se*, appeals a Jefferson Circuit Court
order that denied his motion for post-conviction relief pursuant to Kentucky Rules
of Criminal Procedure (RCr) 11.42. Finding no error, we affirm.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

In November 2005, a Jefferson County grand jury indicted Layton on charges of trafficking in a controlled substance, possession of drug paraphernalia, and being a persistent felony offender (first-degree). Following several continuances, Layton's case was scheduled for a jury trial in May 2007.

A few days before trial, Layton's attorney unsuccessfully moved to suppress the evidence seized from Layton's apartment pursuant to a search warrant. On the morning of trial, Layton chose to accept a plea agreement offered by the Commonwealth, which also resolved a separate case pending in another division of circuit court. Layton entered an *Alford* plea to the charges, and the court subsequently sentenced him to a total of fifteen years' imprisonment.

In March 2008, Layton moved the circuit court to vacate his conviction due to alleged ineffective assistance rendered by his trial counsel. Layton's primary argument focused on his belief that counsel had failed to raise viable suppression issues. The trial court rendered a written order denying Layton's RCr 11.42 motion without an evidentiary hearing, and this appeal followed.

Layton opines that trial counsel failed to investigate and present suppression issues regarding the constitutionality of his detention by police and the veracity of the search warrant affidavit. Layton also asserts that, because his RCr

11.42 motion alleged facts that were not refuted by the record, the court improperly denied his request for post-conviction counsel and an evidentiary hearing.

Where, as here, ineffective assistance of counsel is alleged in the context of a guilty plea proceeding, the movant must show, “(1) that counsel made errors so serious that counsel's performance fell outside the wide range of professionally competent assistance; and (2) that the deficient performance so seriously affected the outcome of the plea process that, but for the errors of counsel, there is a reasonable probability that the defendant would not have pleaded guilty, but would have insisted on going to trial.” *Sparks v.*

Commonwealth, 721 S.W.2d 726, 727-28 (Ky. App. 1986), *citing Hill v. Lockhart*, 474 U.S. 52, 106 S. Ct. 366, 370, 80 L. Ed. 2d 203 (1985). Furthermore, a trial court must hold an evidentiary hearing and appoint post-conviction counsel only “if there is a material issue of fact that cannot be conclusively resolved, i.e., conclusively proved or disproved, by an examination of the record.” *Fraser v. Commonwealth*, 59 S.W.3d 448, 452-53 (Ky. 2001).

The record indicates that the suppression motion filed by counsel challenged the constitutionality of Layton’s detention and the search of his apartment. Although Layton contends that counsel failed to investigate these issues, the trial court, in its order denying RCr 11.42 relief, stated:

Nonetheless, after reviewing the record, the Court finds that there is no substantive merit to Layton’s ineffective assistance claims. While Layton claims counsel ineffectively presented the suppression motion at issue, the Court finds that counsel presented it effectively

in open court on May 22, 2007. His suppression argument was based on the allegation that the search warrant affidavit did not establish the reliability of the confidential informant, and that the keys to Layton's dwelling were, therefore, unlawfully seized. He presented all the facts the Court needed to rule on the motion, and any error in the ruling was the Court's, not counsel's.

Layton also asserts in his motion that he was not 'present at the discussion nor the ruling on this motion, prior to the trial plea,' apparently arguing that his due process rights were violated. This is a patently false claim, as the video record reveals that Layton was present when both occurred.

The record on appeal does not include a videotape or transcript of the suppression hearing; consequently, we must assume that the omitted record supports the trial court's findings. *Chestnut v. Commonwealth*, 250 S.W.3d 288, 303 (Ky. 2008). After careful consideration, we are satisfied that the trial court conducted a thorough review of Layton's claims and correctly relied on the record to refute his claims. Accordingly, we find no error in the trial court's denial of RCr 11.42 relief without an evidentiary hearing or appointment of post-conviction counsel.

For the reasons stated herein, we affirm the order of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ronald Layton, *Pro Se*
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BRIEF FOR APPELLEE:

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