

RENDERED: OCTOBER 21, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2010-CA-000908-MR

RAMAZANI AMURI

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
ACTION NO. 08-CR-01666

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: CAPERTON, KELLER AND LAMBERT, JUDGES.

KELLER, JUDGE: Ramazani Amuri (Amuri) appeals from an order of the Fayette Circuit Court denying his motion for post-conviction relief pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42. The trial court denied the motion without conducting an evidentiary hearing. For the following reasons, we affirm.

## FACTS

On December 17, 2008, a Fayette County Grand Jury indicted Amuri for two counts of first-degree robbery, one count of first-degree burglary, and one count of second-degree burglary. The Commonwealth subsequently made a written plea offer to Amuri. The terms of the offer were that Amuri plead guilty to first-degree criminal attempt to robbery (Count 1); second-degree robbery (Count 2); second-degree burglary (Count 3); and second-degree criminal attempt to burglary (Count 4). The Commonwealth agreed to recommend a sentence of five years for Count 1, ten years for Count 2, five years for Count 3, and twelve months for Count 4. The offer did not state whether the sentences would run concurrently or consecutively.

On June 26, 2009, Amuri appeared before the Fayette Circuit Court to plead guilty and participated in a standard plea colloquy with the trial judge.

Amuri acknowledged that he was not ill at the time, nor was he under the influence of drugs or alcohol. Additionally, Amuri indicated that he was satisfied with his counsel's representation and that he had not been pressured, threatened, or otherwise coerced into pleading guilty. He also acknowledged that the plea agreement forms had been read and explained to him and that his counsel had also explained the charges and any lesser-included offenses and defenses to him.

Amuri further stated he was aware that he would be waiving a number of constitutional rights by pleading guilty, and acknowledged that he understood the consequences of his plea.

Amuri acknowledged that he understood the sentences recommended by the Commonwealth, and the trial judge explained the difference between concurrent and consecutive sentences. The trial judge then explained that sentencing was within his discretion and that he could sentence Amuri to a minimum of ten years and a maximum of twenty years. Amuri acknowledged that he understood this.

The trial judge then asked Amuri if anyone promised him that, in return for pleading guilty, the judge would probate him or give him any special treatment. Amuri responded by stating that his counsel told him he would get “ten, non-violent” if he pled guilty. In response, the judge stated, “You understand that you’re looking, as I just explained, you’re looking between ten and twenty?” Amuri then acknowledged he understood this. The judge also explained that it was within his discretion to send Amuri to jail or probate his sentence, and Amuri stated he understood.

The trial judge found that Amuri’s guilty plea had been made voluntarily, knowingly, and intelligently, and the judge accepted it as valid. Amuri subsequently appeared before the trial court for a sentencing hearing, and the judge ultimately sentenced him to seventeen years’ imprisonment.

On January 15, 2010, Amuri filed a *pro se* RCr 11.42 motion to vacate his judgment and sentence on grounds of ineffective assistance of counsel. The trial court then appointed Amuri post-conviction counsel who filed a supplemental pleading on Amuri’s behalf. Without holding an evidentiary hearing, the trial

court entered an order on April 27, 2010, denying Amuri's motion. It is from this order that Amuri appeals.

### STANDARD OF REVIEW

In order to prevail on a claim of ineffective assistance of counsel, the defendant must satisfy the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). *See Gall v. Commonwealth*, 702 S.W.2d 37 (Ky. 1985). Under this standard, a party asserting such a claim is required to show: (1) that trial counsel's performance was deficient in that it fell outside the range of professionally competent assistance; and (2) that the deficiency was prejudicial because there is a reasonable probability that the outcome would have been different but for counsel's performance. *Strickland*, 466 U.S. at 687, 104 S. Ct. at 2064.

When a movant has pled guilty, the *Strickland* test is slightly modified. In such instances, the second prong of the *Strickland* test includes the requirement that a defendant demonstrate that, but for the alleged errors of counsel, there is a reasonable probability he would not have entered a guilty plea, but rather would have insisted on proceeding to trial. *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985); *Sparks v. Commonwealth*, 721 S.W.2d 726, 727-28 (Ky. App. 1986).

### ANALYSIS

On appeal, Amuri contends that he received ineffective assistance of counsel because his counsel either misadvised him regarding the terms of the

Commonwealth's plea offer or failed to ensure that the plea documents were accurate. Specifically, Amuri contends that his counsel advised him that the Commonwealth would recommend that his sentences run concurrently for a total of ten years and that the trial court would follow this recommendation. Amuri further argues that the trial court erred when it denied his motion without an evidentiary hearing. We disagree.

As noted above, at the guilty plea proceeding, the trial judge explained that it was within his discretion to run the sentences concurrently or consecutively, and he could sentence Amuri to a minimum of ten years and a maximum of twenty years. Amuri acknowledged that he understood this and that he still wanted to plead guilty. Thus, even if we assume that Amuri's counsel advised him that his sentences would run concurrently, the trial judge explained that was not necessarily the case. Amuri acknowledged that he understood this; therefore, his argument that he would not have pled had he known the trial judge could run his sentences consecutively is without merit. *Sparks*, 721 S.W.2d at 727-28. Accordingly, the trial court correctly denied Amuri's RCr 11.42 motion.

We also conclude that the trial court correctly ruled on Amuri's motion without first conducting an evidentiary hearing. There is no automatic entitlement to an evidentiary hearing with regard to an RCr 11.42 motion. Rather, a hearing is required only if there is an "issue of fact that cannot be determined on the face of the record." RCr 11.42(5); *Stanford v. Commonwealth*, 854 S.W.2d 742, 743-44

(Ky. 1993). Because Amuri's allegations are clearly refuted on the face of the record, the trial court did not err in refusing to hold an evidentiary hearing.

### CONCLUSION

For the foregoing reasons, we affirm the order of the Fayette Circuit Court.

ALL CONCUR.

#### BRIEFS FOR APPELLANT:

M. Brooke Buchanan  
Assistant Public Advocate  
Frankfort, Kentucky

#### BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

W. Bryan Jones  
Assistant Attorney General  
Frankfort, Kentucky