

RENDERED: SEPTEMBER 30, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001534-MR

ANGELINE INGRAM

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 06-CR-00537

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS AND LAMBERT, JUDGES; SHAKE,¹ SENIOR JUDGE.

SHAKE, SENIOR JUDGE: Angeline Ingram appeals from the Hardin Circuit Court's denial of her Kentucky Rules of Criminal Procedure (RCr) 11.42 motion to alter, vacate, or amend her conviction based upon ineffective assistance of trial counsel. Ingram claims that counsel misadvised her concerning her potential

¹ Senior Judge Ann O'Malley Shake 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.

release and that the misadvice was the sole reason she pleaded guilty. Upon review of the trial court's order, the facts of the case, and applicable case law, we affirm the Hardin Circuit Court order.

On July 6, 2006, Ingram, along with her co-defendants, robbed South Central Bank, located in Elizabethtown. Although she did not brandish a weapon, a picture of the crime shows Ingram participating in the robbery. Ingram admitted to police that she planned the robbery. She later recanted her confession.

On September 6, 2006, Ingram was indicted by the Hardin County Grand Jury for one count of first-degree robbery. In exchange for her guilty plea, the Commonwealth offered Ingram a sentence recommendation of ten-years' imprisonment. Although she initially rejected the offer, Ingram accepted the Commonwealth's offer on the day of trial.

Ingram claims that her acceptance was predicated on her trial counsel's advise that she might be eligible for release in 3 to 5 years with the application of good time and education credits. Following the entry of the plea agreement, Ingram learned that she would not be eligible for release until she served at least 85% of her sentence and would not receive education or good time credits. Based upon this information, Ingram moved the Hardin Circuit Court to reverse her conviction.

On April 30, 2010, the court held an evidentiary hearing on this matter. Ingram's mother and father both testified that trial counsel discussed the

possibility of early release based upon good time and educational credits. Trial counsel and his associate both denied advising Ingram and her family that she would be eligible for release in three to five years.

On July 21, 2010, the trial court issued an order denying Ingram's motion to vacate. The court determined that Ingram had not met her burden of proof that misadvice occurred. Accordingly, there is no RCr 11.42 relief.

Although the court continued its analysis, its subsequent determinations do not make its finding on the evidence any less dispositive.

The Sixth Amendment to the United States Constitution provides the right to competent counsel. U.S. Const. amend. VI. In order to prevail on an ineffective assistance of counsel claim, first, the defendant has the burden of proof to show that his counsel's performance was deficient. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). A showing of deficient performance requires proof that counsel made such egregious errors that the movant was effectively denied his right to counsel under the Sixth Amendment. *Id.* Since the trial court's review of counsel's performance is highly deferential, the defendant's burden of proof requires him or her to overcome the presumption that counsel's actions were reasonable. *Brown v. Commonwealth*, 253 S.W.3d 490, 498-99 (Ky. 2008).

The trial court found that Ingram failed her burden of proof to show that defense counsel misadvised her. Appellate review will not disturb a trial court's findings of fact unless the findings are clearly erroneous. CR 52.01. We

must give “due regard to the opportunity of the trial court to judge the credibility of witnesses.” *Id.* Defense counsel and co-counsel both testified that Ingram was not improperly advised. Although her parents believed that Ingram would have an opportunity for an earlier release, the trial court opined that the parents could have confused the potential sentence for first-degree robbery with that of a lesser included offense. Further, the trial court was not persuaded by Ingram’s argument that her acceptance of a previously rejected plea was evidence that she was misadvised. In light of defense counsels’ testimonies, the trial court’s ability to judge witness credibility, and the circumstances surrounding Ingram’s decision to plead guilty, the trial court’s conclusion that Ingram failed to meet her burden of proof that defense counsel misadvised her is supported by evidence and is not clearly erroneous.

Accordingly, we affirm the Hardin Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Kate Dittmeier Holm
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General

J. Hays Lawson
Assistant Attorney General
Frankfort, Kentucky