RENDERED: JANUARY 14, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001558-MR

WILLIAM SHEEHAN — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM, JR., JUDGE
ACTION NO. 02-CR-001894 & 02-CR-002352

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: TAYLOR, CHIEF JUDGE; DIXON, JUDGE; ISAAC,[1] SENIOR JUDGE.

DIXON, JUDGE: Appellant, William Sheehan, appeals from an order of the Jefferson Circuit Court denying his motion for post-conviction relief pursuant to RCr 11.42. Finding no error, we affirm.

[1] Senior Judge Sheila Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

On August 29, 2002, a Jefferson County Grand Jury indicted Appellant for (1) first-degree wanton endangerment, (2) two counts of violation of a protective order, (3) fourth-degree assault, (4) third-degree criminal mischief, (5) criminal attempt to commit murder, (6) first-degree assault, (7) first-degree burglary, (8) three counts of first-degree wanton endangerment, (9) possession of a firearm by a convicted felon, (10) first-degree stalking, and (11) being a first-degree persistent felony offender. All of the charges stemmed from incidents that occurred during the period of August 15, 2002, to August 25, 2002, wherein Appellant engaged in various acts of domestic violence against his ex-girlfriend, Crystal Blackford. Appellant's behavior escalated to the point that on August 25, 2002, he shot and seriously wounded Blackford.

On April 7, 2004, Appellant appeared in open court and, pursuant to a plea agreement, pled guilty to thirteen of the charges, in exchange for the prosecutor's recommendation to dismiss the charge for criminal attempt to commit murder and to recommend a sentence of twenty-five years' imprisonment. On July 15, 2004, Appellant was sentenced in accordance to the plea agreement.

On July 15, 2005, Appellant filed a *pro se* motion to vacate the judgment and sentence pursuant to RCr 11.42, arguing that his trial counsel had been ineffective for recommending that he plead guilty. Appellant claimed that he had been taking anabolic steroids during the period of the offenses and counsel should have investigated a "roid rage" defense.

Following two separate evidentiary hearings, the trial court on April 21, 2009, denied Appellant's motion, finding that counsel's advice to accept the plea agreement and forego a defense based on anabolic steroids was reasonable trial strategy. This appeal ensued.

In an RCr 11.42 proceeding, the movant has the burden to establish convincingly that he was deprived of substantial rights that would justify the extraordinary relief afforded by the post-conviction proceeding. *Dorton v. Commonwealth*, 433 S.W.2d 117, 118 (Ky. 1968). Since Appellant entered a guilty plea, a claim that he was afforded ineffective assistance of counsel requires him to 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 pled guilty, but would have insisted on going to trial. *Bronk v. Commonwealth*, 58 S.W.3d 482, 486-87 (Ky. 2001). *See also Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

A criminal defendant may demonstrate that his guilty plea was involuntary by showing that it was the result of ineffective assistance of counsel. In such a case, the trial court is to "consider the totality of the circumstances surrounding the guilty plea and juxtapose the presumption of voluntariness inherent in a proper plea colloquy with a *Strickland v. Washington* inquiry into the performance of

counsel." *Rigdon v. Commonwealth*, 144 S.W.3d 283, 288 (Ky. App. 2004) (*Quoting Bronk*, 58 S.W.3d at 486. (footnotes omitted)). However, advising a defendant to plead guilty is not, by itself, sufficient to demonstrate any degree of ineffective assistance of counsel. *Beecham v. Commonwealth*, 657 S.W.2d 234, 236-7 (Ky. 1983).

As he did in the trial court, Appellant claims that he began abusing steroids shortly after he was released from incarceration on other crimes in 1998. During the time period at issue herein, Appellant states that he was "stacking" upwards of 1800 mg of anabolic/androgenic steroids a week that caused him to suffer significant behavioral changes. Appellant argues that although his trial counsel was aware of his steroid abuse, she failed to investigate whether he acted as a result of "steroid induced psychosis." As a result, Appellant claims he was left without a defense and was forced to plead guilty.

In denying Appellant's motion, the trial court authored a thorough and extensive 19-page opinion outlining the evidence set forth during the evidentiary hearings. The trial court noted the evidence of record did not support Appellant's claim that steroids caused him to suddenly go into a rage and commit the crimes in question. In support, the court pointed out that the Commonwealth had filed a KRE 404(c) notice of its intent to introduce evidence of Appellant's extensive history of domestic violence and abuse. Further, while incarcerated and awaiting trial, Appellant made a number of phone calls threatening to kill Blackford, as well

as her mother and sister. The calls were recorded based on a "credible threat of an escape attempt."

The trial court also referenced the testimony during the first hearing of Appellant's expert, Dr. Harrison G. Pope, Jr., who testified about steroid use and its potential effects on human behavior. Dr. Pope testified that if Appellant had been taking as many steroids as he claimed, he could have experienced "extreme emotional disturbance" when he shot Blackford. Dr. Pope admitted that he had not conducted any type of psychiatric examination of Appellant, but that there was no truly accurate method to determine whether one acted under the influence of steroids.

During the second hearing, Appellant's trial counsel, Sheila Seadler, testified. Ms. Seadler stated that when she first met with Appellant, he was insistent that he wanted her to negotiate a plea agreement whereby he would receive a lenient sentence in exchange for information.[2] Unsatisfied with Ms. Seadler's attempts to do such, Appellant met with the Assistant Commonwealth's Attorney himself. The Commonwealth never agreed to change its 25-year offer. Ms. Seadler further testified that after consulting with other attorneys in her office as well as an attorney that had previously represented Appellant, she concluded that attempting to present a steroid rage defense would have "opened up a huge can of worms of other prior conduct that hadn't been alleged in the KRE 404(c) notice."

[2] Appellant claimed he was a confidential informant and had been working with narcotics investigators.

In concluding that Appellant was not entitled to post-conviction relief, the trial court observed,

> Ms. Seadler frequently communicated with Mr. Sheehan, and they often disagreed. Mr. Sheehan bragged about "who he knew and what he knew" and desired to reach a favorable plea agreement with the Commonwealth in exchange for information. During every meeting with Mr. Sheehan, he discussed his steroid abuse. Accordingly, Ms. Seadler developed a strategy to set the table for a jury instruction on Assault Under Extreme Emotional Disturbance. However she knew a 'roid rage defense was risky and could backfire. Based upon their communications and her perceptions of Mr. Sheehan, she thought the best strategy was to minimize his exposure to competing evidence of his mental state or any more prior bad acts than were already noticed. It appears she feared an expert evaluation of Mr. Sheehan would lead to the conclusion he was not suffering from 'roid rage, but from some other dysfunction that would cast dispersions on his character. Mr. Sheehan acquiesced, and did not disagree with the strategy. Had Mr. Sheehan not committed other acts a jury could perceive as escalating domestic violence over a lengthy period of time; had Mr. Sheehan's approach to a 'roid rage defense not struck Ms. Seadler as disingenuous; and had Mr. Sheehan not displayed pre- and post-arrest behavior that could lead a reasonable person to conclude he was aggressive and violent when not abusing steroids, Ms. Seadler's decision not to investigate a full blown 'roid rage defense may have been unreasonable. Likewise, had Ms. Seadler neglected to develop a defense based upon Mr. Sheehan's steroid abuse, her representation may have been deficient. However, it is apparent that she made a reasonable strategic decision to pursue the defense, she simply chose to avoid the approaches to doing so now advocated by Mr. Sheehan.

As we previously noted, the movant in an RCr 11.42 proceeding has the burden to establish convincingly that he was deprived of some substantial right that would justify the extraordinary relief afforded by the post-conviction proceeding.

Dorton, 433 S.W.2d at 118. Furthermore, with respect to a claim of ineffective assistance of counsel, a court's review of counsel's performance must be highly deferential, and the defendant must overcome the presumption that counsel provided a reasonable trial strategy. *Brown v. Commonwealth*, 253 S.W.3d 490 (Ky. 2008).

Based upon the record herein, we cannot conclude that Appellant received erroneous advice from trial counsel to plead guilty. The record supports a finding that counsel's decision not to pursue a steroid rage defense was reasonable trial strategy in light of the evidence against Appellant. Therefore, the trial court properly ruled that trial counsel did not render ineffective assistance of counsel and Appellant was not entitled to post-conviction relief.

The Jefferson Circuit Court's Opinion and Order denying Appellant's RCr 11.42 motion is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Brian T. Ruff
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Perry T. Ryan
Assistant Attorney General
Frankfort, Kentucky