

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000720-MR

STEVIE BROOKS

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE ANDREW C. SELF, JUDGE
ACTION NO. 08-CR-00711

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: ACREE, CHIEF JUDGE; NICKELL AND STUMBO, JUDGES.

STUMBO, JUDGE: Stevie Brooks appeals from the April 7, 2011, order of the Christian Circuit Court that denied his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion for relief. Because we hold that the trial court did not abuse its discretion when it failed to hold an evidentiary hearing, we affirm.

Brooks was indicted on one count of first-degree criminal abuse against a child, age twelve or under. Robin Moore was charged as a co-defendant.

On November 26, 2008, a plea offer was entered in which the Commonwealth suggested an eight-year sentence for Brooks and further recommended that he be denied probation. The offer was signed by Brooks. The same day, a motion to enter guilty plea was entered and signed by Brooks. Brooks' guilty plea was accepted by the trial court and on February 27, 2009, a judgment on plea of guilty was entered in which Brooks was sentenced to eight years imprisonment and denied probation.

On October 7, 2010, Brooks filed a *pro se* RCr 11.42 motion for relief, in which he alleged that he had received ineffective assistance of trial counsel. Without holding an evidentiary hearing, the trial court denied Brooks' motion in an order entered on April 7, 2011. This appeal followed.

In order to succeed on a claim of ineffective assistance of counsel, a movant must meet two requirements.

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland v. Washington, 466 U.S. 668, 687 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The trial court must therefore determine whether "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

Brooks argues to this Court that the trial court abused its discretion by failing to hold an evidentiary hearing on his RCr 11.42 motion. More precisely, Brooks argues that his allegations of ineffective assistance of counsel cannot be determined by mere reference to the record. We disagree.

An evidentiary hearing is required "if the answer raises a material 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 (Ky. 1993). Hence, an evidentiary hearing is unnecessary when the record refutes the claims of error or when the allegations, even if true, would not be sufficient to invalidate the conviction. *Id.*; *Brewster v. Commonwealth*, 723 S.W.2d 863 (Ky. App. 1986).

Brooks argues that he was denied effective assistance of counsel because it was promised to him that he would only receive six months of the proposed eight year sentence in exchange for his testimony against Moore. He further alleges that the promised six month service was contingent upon him keeping said promise a secret. Therefore, Brooks argues, if he had not relied upon this impossible promise, he would not have plead guilty and would have proceeded with a jury trial.

We agree with the trial court that the record directly refutes Brooks' allegations. The motion to enter guilty plea, filed and signed by Brooks, states:

[i]n return for my guilty plea, the Commonwealth has agreed to recommend to the Court the sentence(s) set forth in the attached “Commonwealth’s Offer on a Plea of Guilty.” Other than that recommendation, **no one, including my attorney, has promised me any other benefit in return for my guilty plea** nor has anyone forced or threatened me to plead “**GUILTY.**”

(Emphasis added). In addition, the Commonwealth’s plea offer, which was also signed by Brooks, states “Commonwealth recommends that the Defendant be **denied probation.**” (Emphasis added). Additionally, the form provided:

PROBATION AND SHOCK PROBATION ARE THE PURE DISCRETION OF THE JUDGE. The granting or denying of probation/ shock probation shall not be a basis for withdrawing a guilty plea or seeking to modify the sentence at a later point.

(Emphasis in original). Brooks’ current allegations are in direct conflict to those terms and conditions upon which he agreed at the time of his guilty plea. The presence of his signature on both the motion to enter guilty plea and the Commonwealth’s plea offer indicate that he read, and agreed to, the information therein. He does not allege that the signatures are not his, that he was unable to read or otherwise comprehend the information on the forms, or that the plea was entered into involuntarily. Also worth noting is that Brooks and the trial court engaged in a guilty plea colloquy in which he verbally testified that he had received no additional offers for his plea and had not been otherwise coerced or forced into pleading guilty. Again, Brooks’ own testimony directly refutes his allegations of ineffective assistance of counsel. Under these circumstances, we find no error with the trial court’s refusal to hold an evidentiary hearing.

For the foregoing reasons, the April 7, 2011 order of the Christian Circuit Court is affirmed.

ALL CONCUR.

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