

RENDERED: AUGUST 2, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000127-MR

SHARON DALE GREER

APPELLANT

v. APPEAL FROM LINCOLN CIRCUIT COURT
HONORABLE DAVID A. TAPP, JUDGE
ACTION NO. 08-CR-00005

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, MAZE, AND NICKELL, JUDGES.

CLAYTON, JUDGE: The appellant, Sharon Greer, appeals the Lincoln County Circuit Court's decision denying his request for relief made pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. Greer asserts that he received ineffective assistance of counsel as a result of his attorney's failure to accept a plea

deal before it was withdrawn. We disagree with Greer's assertion and affirm the decision of the circuit court.

On January 26, 2008, Greer was indicted and charged with first-degree assault and first-degree wanton endangerment. Greer was also charged with being a second-degree persistent felony offender. Greer was arraigned on March 14, 2008, and entered a plea of not guilty. The circuit court's arraignment and scheduling order indicated that plea deals must be entered no less than five days before trial. No plea offers were filed and the record is completely silent as to any plea negotiations.

The case proceeded to trial and a jury found Greer guilty of first-degree assault for the shooting of Sandra Mullins, and of first-degree wanton endangerment for firing the gun in close proximity to Mullins's granddaughter. The jury also found Greer guilty of being a second-degree persistent felony offender. Greer received a life sentence for the assault charge and a ten-year sentence for the wanton endangerment charge. Greer appealed his conviction to the Supreme Court of Kentucky. The Supreme Court affirmed Greer's conviction and remanded the case to the circuit court to correct a clerical error in the judgment which indicated that Greer had been convicted of being a first-degree persistent felony offender instead of a second-degree felony offender. *Greer v. Commonwealth*, 2010 WL 2471842 (Ky. 2010). On March 4, 2011, Greer filed a motion to vacate the circuit court's final judgment pursuant to RCr 11.42. The circuit court denied his motion without a hearing and this appeal followed.

Greer presented several arguments below but only two issues are raised on appeal. Greer contends he was offered a plea bargain but his attorney failed to accept the offer before the deadline. As a result, Greer contends he received ineffective assistance of counsel. Further, he argues that he should have been granted an evidentiary hearing to determine whether this claim has merit. Our review is limited to determining “whether the motion on its face states grounds that are not conclusively refuted by the record and which, if true, would invalidate the [claim].” *Lewis v. Commonwealth*, 411 S.W.2d 321, 322 (Ky. 1967). The record is devoid of any mention of a plea offer and Greer offers no detail as to the offer’s terms. Even assuming Greer did receive an offer, as a matter of law, he is not entitled to relief.

In *Commonwealth v. Reyes*, the Supreme Court of Kentucky explained that “[i]f the prosecutor makes a plea bargain offer and withdraws it before it is accepted or detrimentally acted upon by the defendant, the defendant will not be heard to complain that his constitutional rights to due process and effective counsel have been violated.” *Commonwealth v. Reyes*, 764 S.W.2d 62, 64-65 (Ky. 1989)(citing *Government of Virgin Islands v. Scotland*, 614 F.2d 360, 365 (3rd Cir. Ct. App. 1980)). In *Government of Virgin Islands v. Scotland*, the United States Court of Appeals for the Third Circuit reasoned that, when there is no reliance on a plea offer, the defendant’s remedy is his constitutional right to trial. 614 F.2d at 365. “There is no rational basis for holding, in essence, that a

trial is sufficient for the defendant who has not been offered a plea and insufficient for the one who has.” *Id.*

Greer presents no evidence that he detrimentally relied on a plea offer made by the Commonwealth and no valid plea agreement exists on record. Furthermore, Greer was afforded his constitutional right to a trial. Thus, for the reasons set forth above, Greer was not denied his right to effective assistance of counsel and was not entitled to a hearing. The decision of the Lincoln County Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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