

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001660-MR

JEREMY ALLEN SHIELDS

APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KEN M. HOWARD, JUDGE
ACTION NO. 09-CR-00075

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, LAMBERT, AND MOORE, JUDGES.

MOORE, JUDGE: Jeremy Allen Shields appeals the Hardin Circuit Court's order denying his RCr¹ 11.42 motion to vacate his sentence. After a careful review of the record, we affirm because the circuit court did not err in denying Shields's RCr 11.42 motion without holding an evidentiary hearing.

¹ Kentucky Rules of Criminal Procedure.

I. FACTUAL AND PROCEDURAL BACKGROUND

Pursuant to a superseding indictment, Shields was charged with the following crimes: Capital murder; kidnapping, a capital offense; first-degree rape; first-degree sodomy; and tampering with physical evidence. Shields entered a guilty plea to the counts of capital murder, first-degree rape, and tampering with physical evidence. In exchange for his guilty plea and stipulation of probable cause, the Commonwealth agreed to dismiss without prejudice the kidnapping and first-degree sodomy charges. The Commonwealth also agreed to recommend sentences of life without probation or parole for twenty years for the capital murder charge; fifteen years of imprisonment for the first-degree rape charge; and three years of imprisonment for the tampering with physical evidence charge, all to run concurrently, for a total of life imprisonment without probation or parole for twenty years. The circuit court accepted Shields's guilty plea and sentenced him to life imprisonment on the murder conviction; fifteen years of imprisonment on the first-degree rape conviction; and three years of imprisonment on the tampering with physical evidence conviction. The court ordered all sentences to run concurrently for a total of life imprisonment, with Shields not being eligible for parole for twenty years.

Before the three-year period for filing RCr 11.42 motions expired, Shields moved the circuit court for an enlargement of time to file his RCr 11.42

motion, pursuant to CR² 6.02. The circuit court granted Shields's motion for an enlargement of time, pursuant to RCr 1.10 and CR 6.02.

Shields then filed his RCr 11.42 motion within the time allotted by the circuit court. Without holding an evidentiary hearing, the circuit court denied his motion.

Shields now appeals, contending that the circuit court erred in denying his RCr 11.42 motion without holding an evidentiary hearing concerning his two claims that he had received the ineffective assistance of trial counsel when counsel advised him that if he did not accept the plea offer, "he would receive the death penalty," and when counsel failed to investigate the Commonwealth's evidence used to support the charges for rape, sodomy, and kidnapping.

II. STANDARD OF REVIEW

In a motion brought under RCr 11.42, "[t]he movant has the burden of establishing convincingly that he or she was deprived of some substantial right which would justify the extraordinary relief provided by [a] post-conviction proceeding. . . . A reviewing court must always defer to the determination of facts and witness credibility made by the circuit judge." *Simmons v. Commonwealth*, 191 S.W.3d 557, 561 (Ky. 2006), *overruled on other grounds by Leonard v. Commonwealth*, 279 S.W.3d 151, 159 (Ky. 2009). An RCr 11.42 motion is "limited to issues that were not and could not be raised on direct appeal." *Id.*

² Kentucky Rules of Civil Procedure.

Pursuant to RCr 11.42(5), if there is “a material issue of fact that cannot be determined on the face of the record the court shall grant a prompt hearing. . . .”

III. ANALYSIS

Shields alleges that the circuit court erred in denying his motion without holding an evidentiary hearing concerning two claims of the ineffective assistance of trial counsel.

A showing that counsel’s assistance was ineffective in enabling a defendant to intelligently weigh his legal alternatives in deciding to plead guilty has two components: (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 pleaded guilty, but would have insisted on going to trial.

Bronk v. Commonwealth, 58 S.W.3d 482, 486-87 (Ky. 2001) (quotation marks omitted).

In his RCr 11.42 motion, Shields claimed that he had received the ineffective assistance of trial counsel when counsel advised him that “he would receive the death penalty” if he did not accept the plea offer to the charges of first-degree rape and sodomy,³ in addition to his acceptance of the plea offer for the murder charge. The circuit court stated on page five of its order that it would “presume that [trial counsel] advised the Defendant ‘You will receive the death

³ Shields’s claim that his counsel advised him to plead guilty to sodomy is misplaced because he did not plead guilty to sodomy and that charge was dismissed in exchange for his guilty plea to other charges. Thus, we will not consider that part of this claim.

penalty' in advising him to accept the plea offer from the Commonwealth for Life without [parole] for twenty (20) years versus going to jury trial in a capital murder case." Regarding Shields's claim that he was also advised to plead guilty to the first-degree rape charge, or he would receive the death penalty, the circuit court stated:

This alleged advice must be reviewed in context. The Defendant was facing a capital murder indictment. The Defendant admitted to the brutal killing of the victim and attempting to hide her body. The Defendant continues in this present motion to acknowledge his guilt of this brutal crime. The Commonwealth's evidence was compelling. The prospects of a death penalty were real. Such advice by [trial counsel] did not intentionally overstate the ' . . . risk, hazards or prospects of the case . . . ' as provided by the [American Bar Association] standards cited by the Defendant.

We find the circuit court did not err in denying this claim of the ineffective assistance of counsel. Shields makes no argument concerning his guilty plea to the charge of capital murder; therefore, he realizes it was good advice for him to plead guilty to that charge based upon the evidence against him because he received a life sentence for that crime, rather than the death sentence the Commonwealth planned to seek if Shields had gone to trial. The uniform citation issued on the date of Shields's arrest states that Shields admitted to killing Wendy Sue Logsdon at his home and removing her body from his home to the place where her body was discovered. Therefore, Shields admitted committing the murder and tampering with physical evidence. Trial counsel did not commit an error so serious that it fell outside the wide range of professionally competent assistance

when counsel advised Shields to also plead guilty to the first-degree rape charge, or he would receive the death penalty. Further, even if this did amount to deficient performance on counsel's part, it did not so seriously affect the outcome of the plea process that but for such an error, Shields likely would have proceeded to trial. Shields had admitted murdering the victim and he was facing the possibility of receiving the death penalty, yet counsel was able to negotiate a plea agreement in which Shields received life imprisonment without the possibility of parole for 20 years rather than the death penalty. Therefore, this ineffective assistance of counsel claim lacks merit, and the circuit court did not err in failing to hold an evidentiary hearing concerning it.

Next, Shields alleges that the circuit court erred in failing to hold an evidentiary hearing regarding his claim that he received the ineffective assistance of counsel when counsel failed to investigate the Commonwealth's evidence used to support the charges for rape, sodomy, and kidnapping. As previously noted, the sodomy charge against Shields was dismissed, so we will not review that part of this claim.

As for the remaining parts of this claim, Shields alleged in his RCr 11.42 motion that counsel failed to investigate, but he did not allege with specificity what counsel would have found that would have caused Shields to choose to go to trial if the investigation would have been conducted. Additionally, other than asserting that the report from a laboratory was questionable and that counsel should have asked why a laboratory in Indiana, rather than one in

Kentucky, was used, Shields does not explain why the report was questionable. Because these are conclusory allegations, we will not address them. *See Stanford v. Commonwealth*, 854 S.W.2d 742, 748 (Ky. 1993) (applying RCr 11.42(2)'s requirement that the motion “shall state specifically the grounds on which the sentence is being challenged and the facts on which the movant relies in support of such grounds. Failure to comply with this section shall warrant a summary dismissal of the motion”). Thus, this claim lacks merit, and the circuit court did not err in failing to hold an evidentiary hearing concerning Shields’s RCr 11.42 motion.

Accordingly, the order of the Hardin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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