

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-000737-MR

EDDIE W. COWEN

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT  
HONORABLE JAMES C. BRANTLEY, JUDGE  
ACTION NO. 07-CR-00309

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING IN PART, REVERSING IN PART,  
AND REMANDING

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BEFORE: J. LAMBERT, STUMBO AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Eddie W. Cowan appeals from an order denying his motion pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42 alleging he was completely denied the right to counsel when counsel did not file a motion to withdraw his guilty plea or request a hearing on his *pro se* motion when heard by the trial court. He further alleges his guilty plea was not knowingly, voluntarily,

and intelligently made because counsel failed to communicate with him in a manner that he could understand and failed to conduct any investigation, including a mitigation investigation. Finally, Cowan contends counsel coerced him into pleading guilty by threatening that if he insisted on a trial, he would be found guilty and sentenced to “Life + 140 years” and not viewed favorably by the parole board. We conclude Cowan was entitled to new counsel to represent him in the proceeding to withdraw his plea. We disagree with Cowan that he received ineffective assistance of counsel prior to entering his guilty plea.

In 2007, Cowan was charged with two counts of second-degree sodomy, a Class C felony; one count of first-degree unlawful transaction with a minor and incest, both Class C felonies; one count of first-degree sodomy, a Class A felony; four counts of first-degree sexual abuse, a Class D felony; possession of marijuana, a Class A misdemeanor; and possession of drug paraphernalia, second offense, a Class D felony. Cowan’s seven victims ranged in age from six to thirteen years of age and included his mentally challenged son, who also faced felonies as a result of his alleged sexual contact with two children. Cowan confessed to the crimes and, if found guilty by a jury, could have been sentenced to a maximum term of life imprisonment.

Counsel from the Department of Public Advocacy was appointed on December 10, 2007. Although counsel met with Cowan on one occasion, after she became ill with a contagious condition, further communication was by written correspondence.

In a letter dated January 16, 2008, trial counsel advised Cowan the Commonwealth's offer of 50 years was a "good offer" because a trial could result in a maximum of "Life to 140 years in prison." However, she also informed him that, in her professional opinion, he would receive a life sentence. She informed him that suppression of his two-hour confession was extremely unlikely and he would not fare well in front of a jury given the crimes for which he was charged and would be perceived as a "monster." If he did not plead guilty, she warned he would get the maximum sentence and "PAROLED BY DEATH." However, trial counsel advised a guilty plea might be considered favorably by the parole board. She also pointed out the negative impact a trial in the matter would have on the children, including his son, and suggested a guilty plea could have a favorable impact on his son's pending criminal charges. Although trial counsel told Cowan she could present him to the jury as a "sad and lonely man who is deeply sick," she described taking such a course as a poor tactical decision in light of the sexual acts Cowan committed.

In a letter dated January 22, 2008, trial counsel again advised Cowan the evidence against him was highly incriminating and, in her professional opinion, there were no viable defenses. She again stressed the difference between 50 years and a life sentence but reminded Cowan that he had a right to a jury trial.

On February 22, 2008, Cowan entered into a plea agreement pursuant to which Cowan agreed to plead guilty to all charges except the misdemeanor,

which was dismissed. Cowan accepted the Commonwealth's offer and entered a guilty plea on February 22, 2008.

Cowan was ordered to complete a presentence sex offender evaluation and sentencing was scheduled for July 7, 2008. Soon after entering his guilty plea, Cowan expressed he desired to withdraw his plea.

In response, trial counsel sent him a letter dated June 14, 2008, wherein she informed Cowan that withdrawing the plea was not recommended and again emphasized the overwhelming evidence of guilt. She further informed him that if he withdrew his plea "at zero hour," after conviction by a jury the parole board would have an "easy reason to defer" him. Trial counsel advised Cowan he could request the trial court to appoint a new attorney and instructed him regarding when and how to withdraw his plea as follows:

When we get to court on the 23rd, the first thing we have to do is review the Sex Offender Treatment Evaluation. Then we stand before the judge for sentencing. I'll ask if you want to say anything to the judge. That's your chance. Tell him then if you want to try to withdraw your plea, try to get a new attorney, and try your lot with a jury. It makes no difference to me. It probably won't matter much to the judge either.

On June 17, 2008, Cowan filed a *pro se* motion to withdraw his guilty plea stating he had a conflict of interest with his trial counsel. On the day of sentencing, June 23, 2008, Cowan and his trial counsel appeared. Trial counsel informed the trial court that Cowan wanted to be heard. Cowan was permitted to speak and stated he wanted to withdraw his guilty plea and referred to the letters

written by trial counsel. The Commonwealth responded that Cowan's motion lacked sufficient specificity. The trial court then asked trial counsel for a response who responded she would not argue the motion because it was "unfounded and ill-advised." Without further inquiry or postponing the matter for appointment of new counsel, the trial court denied the motion.

On August 5, 2008, Cowan was sentenced in accordance with the plea agreement. Cowan did not appeal and the judgment became final on September 4, 2008.

On April 8, 2010, Cowan filed a *pro se* motion for relief pursuant to RCr 11.42 presenting three arguments: (1) counsel was ineffective when she did not request a hearing on his motion to withdraw his plea; (2) counsel failed to prepare a defense; and (3) counsel threatened him to accept the plea agreement. On September 16, 2010, the trial court denied Cowan's motion. In doing so, it found counsel did not prevent Cowan from withdrawing his plea, noting the record disclosed that through written letter, trial counsel advised Cowan when and how to withdraw his plea. It also concluded trial counsel did not threaten or coerce Cowan finding trial counsel gave competent and permissible legal advice to Cowan and her discussion of the best options for Cowan, the children, and his son was not coercive. Finally, the trial court ruled counsel was not ineffective for failing to provide a defense finding the record disclosed counsel understood the facts, the seriousness of the charges and possible penalties.

On January 28, 2011, Cowan filed a *pro se* “Initial Supplement” to his RCr 11.42 motion. In that motion he presented an additional argument that trial counsel was ineffective for failing to advise him he would be classified as a violent offender, subject to the 85% rule contained in Kentucky Revised Statutes (KRS) 439.3401. Cowan has not raised this issue on appeal and, therefore, it is not discussed within this opinion.

On June 8, 2011, the trial court appointed Cowen counsel in his post-conviction proceeding and counsel was given leave to file a written motion in support of the RCr 11.42 motion. Counsel did not enter an appearance until November 9, 2011, and did not file a supplement to Cowan’s *pro se* RCr 11.42 motion until September 27, 2012, more than one year after the appointment of counsel and four years after the judgment became final. In that supplement, it was alleged trial counsel misadvised Cowan of the maximum sentence and failed to investigate for possible defenses and mitigation. The Commonwealth’s response included an argument that the supplement was not timely filed within the three-year limitation period provided in RCr 11.42 (10).

The trial court conducted an evidentiary hearing. Cowan’s trial counsel testified she could not recall the initial interview with Cowan and most communication was by mail. She testified the letters admitted in court were those sent to Cowan. She could not recall the maximum sentence Cowan could receive.

Eric Stovall, Western Regional Manager for the Department of Public Advocacy, testified as a criminal law expert. He testified that at the initial

interview, an attorney receives as much background information as possible, including the client's mental health background. It is critical that the attorney assess the client's ability to understand the attorney. He testified that after that interview, an attorney needs to look at the client's background records. If the client's records denote possible mental disability, the attorney should consider possible mental health experts. When a client is charged with a sex crime, the attorney needs to gather information on any possible history of the client being a victim of sexual abuse.

Cowan testified he felt trial counsel pressured him into pleading guilty and she never inquired about his childhood or whether he was abused as a child. Cowan testified he was physically abused as a child and, on two occasions, was sexually abused. He had also been in a mental hospital as a child. He did not complete high school but, after several attempts, obtained his GED in 2008. He testified his trial counsel did not discuss any possible defenses or strategies in negotiating a plea deal for less than 50 years.

Cowan testified he did not completely understand the letters written. However, he was able to understand that he was offered a 50-year plea agreement and counsel's statements that a jury would consider him a "monster" and a "piece of sh\*t, and he would only be "PAROLED BY DEATH." When asked by the trial court if he authored the *pro se* motions, Cowan testified he did not prepare the motions, which were read to him and then signed.

Dr. Eric Drogin, clinical psychologist, forensic psychologist and attorney, was retained as an expert by Cowan's RCr 11.42 counsel and evaluated Cowan on two occasions to determine Cowan's functional level and ability to understand the legal proceedings. He concluded Cowan functions at a level consistent with mental retardation with low vocabulary, writing, and abstract reasoning abilities and functions at the level of a fourth grader. He testified the letters written by counsel were written at a much higher level and would have been difficult for Cowan to understand.

Following the hearing and briefing by counsel, the trial court issued an opinion and order setting forth the reasons for its denial of Cowan's RCr 11.42 motion and its supplemental motions. It incorporated by reference its September 16, 2010 opinion and order addressing and denying the three claims presented in Cowan's initial RCr 11.42 motion. Without reference to the timeliness arguments raised by the Commonwealth, the trial court addressed the claims presented in Cowan's supplement to his original motion.

The trial court found that although counsel incorrectly advised Cowan that the maximum sentence was "Life + 140 years in prison," it was reasonable to advise Cowan to plead guilty in light of the possible life sentence, his confession, the positive effect a guilty plea might have on the parole board, and the impact on any plea agreement regarding his son. Further, the trial court found Cowan failed to demonstrate that even if he was properly informed of the maximum sentence, he would not have pled guilty. Cowan's claim that his limited mental capacity made



it impossible to understand counsel's letters was also rejected. The trial court noted Cowan filed numerous comprehensible *pro se* motions and, in those motions, referenced counsel's letters and trial counsel's strategy for Cowan to accept responsibility for his confessed crimes, accept less than a life sentence, and receive leniency before the parole board. The trial court further found trial counsel considered possible mitigation evidence but decided as a matter of strategy, Cowan's own prior sexual abuse would not be beneficial evidence.

On appeal, Cowan narrows the issues presented to four: (1) whether he was denied counsel under the United States and Kentucky Constitutions when counsel did not request a hearing on his motion to withdraw his guilty plea; (2) whether trial counsel's alleged failure to communicate with him in a comprehensible manner rendered his guilty plea unknowingly, involuntarily and unintelligently entered; (3) whether he was denied effective assistance of counsel when counsel failed to conduct any investigation, including a mitigation investigation; and (4) whether he was denied effective assistance of counsel because of misadvice regarding the maximum sentence he could receive.

It has been held "on numerous occasions that issues which could have been presented in an initial motion to vacate cannot be raised by subsequent motions." *Crick v. Commonwealth*, 550 S.W.2d 534, 535 (Ky. 1977). However, in reviewing the trial court's September 16, 2010 opinion and order denying Cowan's initial RCr 11.42 motion, it does not contain a clerk's distribution list and, therefore, it cannot be conclusively established that Cowan received the order.

As the trial court observed, it appears he “may” not have received the order because following its entry, Cowan contacted the trial court and inquired as to the status of his motion and continued to file supplements to that motion. The trial court implicitly found Cowan did not receive its September 16, 2010 opinion and order. On the record before this Court, we will not disturb that finding on appeal.

Whether Cowan’s RCr 11.42 pleadings were timely presents a separate issue. RCr 11.42 (10) provides:

Any motion under this rule shall be filed within three years after the judgment becomes final, unless the motion alleges and the movant proves either:

(a) that the facts upon which the claim is predicated were unknown to the movant and could not have been ascertained by the exercise of due diligence; or

(b) that the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively.

Compliance with the rule is a matter of jurisdiction. As noted in *Bush v. Commonwealth*, 236 S.W.3d 621, 623 (Ky.App. 2007), a trial court loses jurisdiction ten days after entry of its final judgment and a motion filed outside the three-year time limitation is insufficient to reinvest jurisdiction. If the trial court was without jurisdiction to decide the claims presented, this Court is likewise without jurisdiction.

Cowan’s *pro se* motion was timely filed. However, the Commonwealth has presented the issue of timeliness because his supplement was not filed by RCr

11.42 motion within the three-year period. We conclude the claims presented on appeal relate back to Cowan's timely RCr 11.42 motion and, therefore, are timely.

In *Roach v. Commonwealth*, 384 S.W.3d 131 (Ky. 2012), our Supreme Court explained the application of the relation back doctrine with respect to RCr 11.42 motions. The Court held that Kentucky Rules of Civil Procedure (CR) 15 applied and amendments may relate back to the date of a timely filed original RCr 11.42 motion. However, the application of the relation back doctrine is limited to amended pleadings that amplify and clarify the original claims and to those asserting "new, otherwise untimely claims are related to the original ones by shared facts such that the claim can genuinely be said to have arisen from the same conduct, transaction, or occurrence. New claims based on facts of a different time or type will not meet that standard and so, generally, should not be allowed." *Id.* at 137 (quoting CR 15).

In his timely filed *pro se* RCr 11.42 motion, Cowan argued his counsel was ineffective for refusing to represent him in withdrawing his guilty plea. In his supplemental motion, he made the same argument based on the same underlying facts and, therefore, the claim relates back to his timely RCr 11.42 motion. The Commonwealth does not argue otherwise.

Under the Sixth Amendment to the United States Constitution and Section 11 of the Kentucky Constitution, a criminal defendant is entitled to the assistance of counsel at every critical stage of the criminal proceeding. *Henderson v. Commonwealth*, 396 S.W.2d 313, 314 (Ky. 1965). In *Commonwealth v. Tigue*,

459 S.W.3d 372, 384 (Ky. 2015), as matter of first impression, the Kentucky Supreme Court held that a “motion to withdraw a guilty plea made before entry of the final judgment of conviction and sentence is a ‘critical stage’ of the criminal proceedings to which the right to counsel attaches.”

Under strikingly similar facts, the Court held prejudice may be presumed and a *per se* Sixth Amendment violation occurred when counsel refused to assist an accused in withdrawing his guilty plea because counsel believed the plea was in the defendant’s best interest. *Id.* at 385. The Court characterized the decision to withdraw a guilty plea as one personal to the accused and not a matter of strategy to be made by counsel. “To stand silent and refuse to act on a decision that is personal to the defendant is no different than not being present at all. It is a complete denial of counsel.” *Id.* at 386.

The Court also found constitutional error when trial counsel continues to represent a defendant on a motion to withdraw a guilty plea based on allegations of counsel’s misconduct. *Id.* at 387. Both the United States Supreme Court and our Supreme Court have recognized that effective counsel means conflict-free counsel. *Burger v. Kemp*, 483 U.S. 776, 107 S.Ct. 3114, 97 L.Ed.2d 638 (1987); *Bartley v. Commonwealth*, 400 S.W.3d 714, 719 (Ky. 2013). Again, under an exception to the well-known prejudice prong of the *Strickland* standard for RCr 11.42 motions, when there is an actual conflict of interest between counsel and his or her criminal-defendant client, prejudice is presumed. *Mitchell v. Commonwealth*, 323 S.W.3d 755, 759-60 (Ky.App. 2010).

The *Tigue* Court held an actual conflict of interest arose when the accused sought to withdraw his plea based on allegations that counsel threatened and coerced him into pleading guilty. Citing with approval the federal court's reasoning in *United States v. Davis*, 239 F.3d 282 (2nd Cir. 2001), the Court held:

When a “defendant ma[kes] a claim of coercion during his plea withdrawal hearing ... his accusation place[s] his attorney in the position of having to defend himself, and potentially to contradict [the defendant], in open court.” *Davis*, 239 F.3d at 287. This moves beyond a generic claim of coercion and shows an actual conflict of interest. *Id.* This is so even if counsel stands mute and does not contradict the defendant. *Id.* (“Counsel’s statements at the hearing did not directly contradict Davis, but neither did they support him. Defense counsel’s silence at this stage of the proceedings illustrates his actual conflict.”) Thus, to the extent [counsel] was present at the sentencing hearing, any continued representation during the plea withdrawal motion created an actual conflict of interest adversely affecting his performance.

*Tigue*, 459 S.W.3d at 387.

We are unable to factually distinguish counsel’s performance in *Tigue* from those now presented. While we cannot fault trial counsel’s refusal to advocate for the withdrawal of Cowan’s guilty plea in light of the underlying charges, his confession, potential victim testimony, and a possible life sentence, we nevertheless hold that there was a complete denial of counsel and conflict-free counsel.

Under *Tigue*, the the trial court must determine if a conflict exists and, if the defendant does not waive his right to conflict-free counsel or his right to counsel, the defendant must be provided with the conflict-free counsel for purposes of the

plea withdrawal. *Id.* Without the benefit of the *Tigue* opinion, the trial court did not appoint new counsel or inquire if Cowan desired to reject representation and summarily denied Cowan's motion. Therefore, we must address what remedy is available.

In *Tigue*, the Court held that although there was a complete denial of counsel, the remedy was not a reversal of the underlying conviction. "Because the denial of counsel caused by [Cowan's] counsel's refusal to assist him in trying to withdraw his guilty plea occurred after entry of that plea, it can have no direct effect on that plea." *Id.* at 389. Until withdrawn, Cowan's guilty plea "is a legal conviction from which judgment can be pronounced and sentence can be imposed." *Id.* The Court also rejected as an alternative remedy remand for a mandatory evidentiary hearing on *Tigue*'s motion to withdraw his guilty plea stating that it would "go too far" and the denial of counsel only requires an appellate court "to rewind this matter to the point in time when [an accused] had already entered his plea but before he was sentenced." *Id.* at 390.

The Court gave specific directions to the trial court as to the procedure on remand.

A defendant in such a position *may* again seek to withdraw his guilty plea. And if he does, he is entitled to the assistance of counsel (other than the trial counsel he accuses of having acted ineffectively) and to be heard on his underlying claims. But such a defendant might not again seek to withdraw his plea. He could, for example, be enticed by the Commonwealth to leave his plea in place by a recommendation of a lesser sentence or a favorable parole recommendation.

*Id.* The remedy to which Cowan is entitled on his claims of denial of counsel in the proceedings to withdraw his guilty plea is for this Court to vacate the judgment and remand for further proceedings as may be required, depending on whether Cowan pursues his motion to withdraw his guilty plea. *Id.*

As in *Tigue*, Cowan claims he received ineffective assistance prior to the entry of his guilty plea. If successful on his pre-plea ineffective assistance claims, Cowan would be entitled to have his judgment and conviction vacated. *Id.*

The Commonwealth argues Cowan's claims that his trial counsel corresponded in a manner he could not understand, failed to investigate for mitigation evidence, and misadvised him as to the maximum sentence, do not arise from the same conduct, transaction, or occurrence as the allegations in his timely RCr 11.42 claims. *Roach*, 384 S.W.3d at 137.

In addition to his claim regarding denial of counsel when he sought to withdraw his plea, in his *pro se* motion and memorandum, Cowan alleged counsel failed to prepare a defense and threatened him into pleading guilty. The letters sent by counsel were included with his pleadings. He further referenced the ethical duty of an attorney to communicate with his or her client and alleged he was coerced into pleading guilty. We agree with Cowan that the claims presented in his supplemental motion clarify or amplify original claims and relate back to his timely filed motion.

Cowan's remaining claims must be analyzed under the two-prong standard for ineffective assistance of counsel claims. To prevail on an ineffective assistance of counsel claim, a defendant must show counsel's performance was deficient and the defendant was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). The deficiency prong is satisfied by showing "counsel's representation fell below an objective standard of reasonableness." *Id.* at 688, 104 S.Ct. 2064. The court applies a "strong presumption" that counsel's representation was within the "wide range" of reasonable professional assistance[.] *Id.* at 689, 104 S.Ct. 2052.

In the context of a guilty plea, the prejudice prong requires the movant to "demonstrate 'a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" *Premo v. Moore*, 562 U.S. 115, 129, 131 S.Ct. 733, 743, 178 L.Ed.2d 649 (2011) (quoting from *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)). In *Premo*, the Supreme Court observed that the burden to establish prejudice is high when a guilty plea is challenged based on ineffective assistance of counsel.

There is a most substantial burden on the claimant to show ineffective assistance. The plea process brings to the criminal justice system a stability and a certainty that must not be undermined by the prospect of collateral challenges in cases not only where witnesses and evidence have disappeared, but also in cases where witnesses and evidence were not presented in the first place.



*Id.* at 132, 131 S.Ct. at 745–46. A court must presume counsel rendered competent advice when his or her client considered pleading guilty. *Williams v.*

*Commonwealth*, 336 S.W.3d 42, 48 (Ky. 2011). “[T]o obtain relief ... a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.” *Id.* (quoting *Padilla v. Kentucky*, 559 U.S. 356, 372, 130 S. Ct. 1473, 1485, 176 L. Ed. 2d 284 (2010)).

When an evidentiary hearing is held and RCr 11.42 relief is denied, we may not reverse unless the trial court’s findings of fact are clearly erroneous. On factual matters and findings regarding witness credibility, we must defer to the determinations made by the trial judge. *McQueen v. Commonwealth*, 721 S.W.2d 694, 698 (Ky. 1986).

“[T]here is no deficiency in failing to instruct one’s client of legal defenses or strategies which are not available to the client.” *Rigdon v. Commonwealth*, 144 S.W.3d 283, 291 (Ky. App. 2004). Moreover, advising a client to plead guilty is not, in and of itself, evidence of any degree of ineffective assistance of counsel. *Beecham v. Commonwealth*, 657 S.W.2d 234, 236-37 (Ky. 1983). “There is a strong presumption that, under the circumstances, the actions of counsel might be considered sound trial strategy.” *Russell v. Commonwealth*, 992 S.W.2d 871, 875 (Ky.App. 1999).

Cowan’s contention that he could not understand counsel’s letters is unpersuasive. In fact, the blunt language used in the letters conveyed in no uncertain terms counsel’s professional opinion that there was no viable defense to

the charges, she had no basis to suppress his confession, and he would not fare well before a jury because of the heinous nature of his crimes against the child-victims and their statements. The language of those letters was detailed but straightforward and simple. The trial court was in the best position to observe Cowan's ability to understand the proceedings and found Cowan understood and acted upon trial counsel's advice and instructions. We conclude it did not abuse its discretion.

Likewise, counsel's decision that any mitigation evidence would not result in a sentence of less than 50 years for the crimes committed, was not unreasonable. "[A]s a general rule ...an effective attorney—regardless of a high caseload—would conduct at least some investigation into the client's case." *Williams*, 336 S.W.3d at 49. However, Cowan does not contend that any further investigation would have proven him not guilty or that his damning confession was invalid. He argues that his mental impairments and own sexual abuse was mitigation evidence that would have been uncovered by trial counsel's investigation.

The extent of any investigation required must be viewed under the circumstances of the particular case. Here, the plea offer was for a sentence less than what could be imposed. Trial counsel specifically noted that evidence of Cowan's mental health could be introduced into evidence but reasonably concluded that such evidence would do little to convince a jury to recommend less than the maximum sentence. Additionally, she expressed concern that if the pre-

trial process was delayed, the Commonwealth would withdraw its offer. The trial court did not abuse its discretion in finding counsel's performance was not deficient.

Trial counsel misadvised Cowan regarding the maximum sentence he could receive. However, the trial court found that even if counsel's performance was deficient, Cowan failed to demonstrate he would not have pled guilty and insisted on going to trial had he known he faced only a maximum life sentence. We agree.

Although counsel erroneously stated "Life + 140 years" was the maximum sentence, she repeatedly advised Cowan that in her opinion, he would receive life as the maximum sentence. Cowan received considerably less than a life sentence.

Additionally, as noted by the trial court, in Cowan's case there were other considerations other than the length of sentence. Given Cowan's confession, a lengthy prison sentence for his crimes was inevitable. From trial counsel's letters, it is apparent that in light of the evidence the only viable strategy was to save Cowan's son and the other victims from testifying, perhaps decrease his son's criminal liability, and possibly gain favorable treatment by the parole board. Cowan has not shown that counsel's misadvice was prejudicial.

We conclude Cowan did not receive ineffective assistance of counsel prior to entering his plea. Consequently, we affirm the judgment and conviction of the Hopkins Circuit Court. The question remains whether our holding forecloses any possible argument for withdrawal of Cowan's plea based on counsel's pre-plea conduct. Although it seemingly would, *Tigue* teaches differently.

In a footnote, the Court noted that on remand, a motion to withdraw a guilty plea is a direct claim that a plea was invalid because it was unknowing and involuntary. *Tigue*, 459 S.W.3d at 399 n. 8. In contrast, an RCr 11.42 claim is an indirect claim, namely, that counsel was ineffective prior to the plea leading the defendant “to enter a plea that he would not otherwise have entered.” *Id.* The Court admitted “[t]his is a subtle distinction” but one recognized in our law. *Id.* The Court observed that “[p]art of the reason for the distinction is that different standards of review govern the two types of claims.” *Id.*

The judgment and conviction of the Hopkins Circuit Court is affirmed. However, we reverse and remand on the basis that Cowan was completely denied counsel and conflict-free counsel on his motion to withdraw his guilty plea. Further proceedings may or may not be required, depending upon whether Cowan renews his request to withdraw his guilty plea.

ALL CONCUR.

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