

RENDERED: JULY 29, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000090-MR

RAPHAEL COLEMAN

APPELLANT

v.

APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE ANDREW SELF, JUDGE
ACTION NOS. 09-CR-00589 AND 10-CR-00175

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MAZE, AND STUMBO, JUDGES.

DIXON, JUDGE: Appellant, Raphael Coleman, appeals *pro se* from an order of the Christian Circuit Court denying his motion for post-conviction relief pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. Finding no error, we affirm.

In October 2009, Appellant was charged with trafficking in marijuana over eight ounces and illegal possession of drug paraphernalia. Subsequently, in

April 2010, Appellant was charged with being a first-degree persistent felony offender. Appellant thereafter entered into a plea agreement wherein the Commonwealth recommended five years on the trafficking charge, enhanced to ten years' imprisonment by virtue of the PFO I charge. The plea agreement specifically stated that the "Commonwealth recommends that the Defendant be denied Probation," and that Appellant agreed to "[f]orfeit all items seized." By final judgment entered on September 19, 2013, Appellant was sentenced to ten years' imprisonment.

On August 18, 2014, Appellant filed an RCr 11.42 motion, as well as motions for the appointment of counsel and an evidentiary hearing. Therein, Appellant claimed that his trial counsel rendered ineffective assistance of counsel by failing to explain to him what effect the guilty plea would have and for allowing his property to be seized. Specifically, Appellant argues that his counsel advised him that if he agreed to accept the plea deal, the trial court would postpone sentencing until after Appellant's other unrelated sentence had been completed so that he could receive probation on the instant charges. Appellant further claimed that trial counsel ensured that his seized property would be returned to him when, in fact, it was forfeited according to the plea agreement.

On August 23, 2014, the trial court denied all of Appellant's motions, finding that Appellant's guilty plea was knowing, intelligent, and voluntary. The trial court noted that the plea form signed by Appellant dispelled any argument

concerning the guarantee of probation or the return of his property. Appellant thereafter appealed to this Court as a matter of right.

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). An evidentiary hearing is warranted only “if there is an issue of fact which cannot be determined on the face of the record.” *Stanford v. Commonwealth*, 854 S.W.2d 742, 743-44 (Ky. 1993), *cert. denied*, 510 U.S. 1049 (1994); RCr 11.42(5). *See also Fraser v. Commonwealth*, 59 S.W.3d 448, 452 (Ky. 2001); *Bowling v. Commonwealth*, 981 S.W.2d 545, 549 (Ky. 1998), *cert. denied*, 527 U.S. 1026 (1999). “Conclusionary allegations which are not supported by specific facts do not justify an evidentiary hearing because RCr 11.42 does not require a hearing to serve the function of a discovery deposition.” *Sanders v. Commonwealth*, 89 S.W.3d 380, 385 (Ky. 2002), *cert. denied*, 540 U.S. 838 (2003), *overruled on other grounds in Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009).

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)). A defendant is not guaranteed errorless counsel, or counsel judged ineffective by hindsight, but counsel likely to render reasonably effective assistance. *McQueen v. Commonwealth*, 949 S.W.2d 70 (Ky. 1997), *cert. denied*, 521 U.S. 1130 (1997). The Supreme Court in *Strickland* noted that a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065. 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).

The plea agreement signed by Appellant, on its face, is sufficient evidence to conclude that he intelligently, knowingly and voluntarily entered his guilty plea.

We find absolutely no evidence in the record to indicate that trial counsel's performance was deficient in any manner. Finally, Appellant's claims herein that he did not understand the implications of the agreement he signed are disingenuous at best. It is clear from Appellant's pleadings that he is familiar with the legal system and, in fact, has worked as a legal aid assistant while incarcerated. There is simply no evidence to support Appellant's arguments herein

Accordingly, we conclude that 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 order of the Christian Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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