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Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001104-MR

BRANDON YOUNG APPELLANT

v. APPEAL FROM MONROE CIRCUIT COURT
HONORABLE DAVID L. WILLIAMS, JUDGE
ACTION NOS. 10-CR-00026 & 10-CR-00084

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, DIXON, AND STUMBO, JUDGES.

DIXON, JUDGE: Brandon Young appeals from an order of the Monroe Circuit Court denying his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion to set aside his conviction due to ineffective assistance of counsel. Finding no error, we affirm.

Young broke into the residence of 78-year-old Clarene Adams, his next-door neighbor. After discovering Adams inside her apartment, Young tore Adams's clothes from her body, tied a plastic bag over her head, and began raping and strangling her. Adams asphyxiated during these events.

Adams's granddaughter returned home while Young was still raping Adams. Young fled the residence, but Adams's granddaughter recognized him and called the police. After the police apprehended Young, he was indicted on murder, first-degree burglary, and two counts of being a second-degree persistent felony offender. The Commonwealth announced its intention to seek the death penalty.

Young filed a motion to enter a guilty plea. In exchange for Young's plea, the Commonwealth offered to recommend dismissing the rape and both persistent felony offender charges. The Commonwealth recommended a sentence of life in prison without the possibility of parole for the murder conviction and twenty years' imprisonment for the burglary conviction. The court sentenced Young consistently with the Commonwealth's recommendation.

Almost two years after Young pleaded guilty, he filed a motion to vacate his sentence under RCr 11.42. The Department of Public Advocacy supplemented it. Young argued his counsel was ineffective for failing to consider or discuss with him the defense of extreme emotional disturbance (EED), failing to call Young's mitigation specialist during sentencing, and breaking the attorney-client privilege by discussing his plea bargain with his mother. He also argued his plea was involuntary because he had ingested his prescription medications and

methamphetamine before his plea colloquy. The court ordered an evidentiary hearing. Young, Young's lead counsel, and Young's second-chair counsel testified therein.

After taking the matter under consideration, the court denied Young's motion. The court determined that Young was not entitled to an EED defense for the following reasons: (1) he had not demonstrated a "triggering event" occurred; (2) he failed to show the outcome of his case would have been different if he had received an EED defense; and (3) his guilty plea waived all defenses. The court rejected Young's claim concerning mitigation evidence because he did not state what evidence a mitigation expert would have provided or how any mitigation evidence would have swayed the court to impose a lesser sentence. Finally, the court held Young's plea was knowingly and voluntarily entered for the following reasons: (1) the court conducted a detailed colloquy pursuant to *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); (2) Young signed the guilty plea forms stating that his plea was knowingly and voluntarily entered; and (3) counsel properly advised Young to plead guilty. Additional facts will be developed as necessary.

Young raises the following arguments on appeal: (1) his attorneys were ineffective for failing to consider or discuss with him an EED defense; (2) his attorneys were ineffective for failing to introduce mitigation evidence at his sentencing hearing; (3) his attorneys were ineffective for breaking the attorney-client privilege by speaking to his mother, who then coerced his plea; and (4) his

guilty plea was not knowingly and voluntarily made because he had taken prescription medications and methamphetamine prior to his plea colloquy.

In order to prevail on a claim of ineffective assistance of counsel, a defendant must meet a two-prong test, proving first that counsel made errors outside the norm of professionally recognized assistance and, second, that counsel's errors caused prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). Further, because he entered a guilty plea, Young is required to show "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985). "The question is whether an attorney's representation amounted to incompetence under prevailing professional norms, not whether it deviated from best practices or most common custom." *Commonwealth v. Pridham*, 394 S.W.3d 867, 875 (Ky. 2012) (citation and internal quotation marks omitted). On appeal from the trial court's denial of an ineffective assistance of appellate counsel claim, we review the circuit court's ruling on the components of the claim *de novo*. *Commonwealth v. Pollini*, 437 S.W.3d 144, 149 (Ky. 2014).

First, Young argues his attorneys were ineffective for failing to consider or discuss with him an EED defense. During the evidentiary hearing, Young described the circumstances leading up to the murder, which he contends created a "triggering event." He stated that at the time of the murder, he had been out of prison for "not even" two months. He also stated he was dealing with the

death of his aunt. Though she had passed away one year before, his mother discussed her death in detail on the day he murdered Adams, and it was the first time he had heard of her death. He also testified he had been drinking and using drugs.

To qualify for an EED instruction, a defendant must have acted with "a temporary state of mind so enraged, inflamed, or disturbed as to overcome one's judgment, and to cause one to act uncontrollably from the impelling force of the extreme emotional disturbance rather than from evil or malicious purposes." *McClellan v. Commonwealth*, 715 S.W.2d 464, 468–69 (Ky. 1986). Furthermore, "there must be evidence of an 'event that trigger[ed] the explosion of violence on the part of the criminal defendant' and that event must be 'sudden and uninterrupted.'" *Holland v. Commonwealth*, 466 S.W.3d 493, 504 (Ky. 2015) (quoting *Foster v. Commonwealth*, 827 S.W.2d 670, 678 (Ky. 1991)). "And, the evidence must establish 'a reasonable explanation or excuse' for the EED, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be." *Spears v. Commonwealth,* 448 S.W.3d 781, 790 (Ky. 2014) (quoting Kentucky Revised Statutes (KRS) 507.020(1)(a)).

Young has failed to identify any legally sufficient triggering event that could have induced within him "a temporary state of mind so enraged, inflamed, or disturbed as to overcome [his] judgment[.]" *McClellan*, 715 S.W.2d at 468–69. The events Young has described—being released from prison, discovering the

death of his aunt, and his substance abuse—would not have induced in the minds of a jury a reasonable belief that his judgment was overcome by their occurrence. Nor could those events provide a "reasonable explanation or excuse" for Young's actions. KRS 507.020(1)(a). The Kentucky Supreme Court has held that "it is wholly insufficient for the accused defendant to claim the defense of extreme emotional disturbance based on a gradual victimization from his or her environment, unless the additional proof of a triggering event is sufficiently shown." *Foster,* 827 S.W.2d at 678. Though these events in Young's life were unfortunate, they did not constitute a triggering event. The trial court did not err in finding that Young was not entitled to an EED defense.

Second, Young argues that his attorney was ineffective for failing to present mitigation testimony at his final sentencing. Young had already entered into a plea agreement with the Commonwealth when he was sentenced. At the evidentiary hearing, Young's lead counsel testified that, although his mitigation specialist had done a thorough job, he did not present any mitigation evidence at sentencing because the circuit court would likely have seen it as a statement of intention not to abide by the plea agreement. Second-chair counsel also testified that she believed the circuit court might have rejected the plea if they presented the evidence and that she believed Young could have received the death penalty.

Young's attorneys were simply not required to enter any mitigation evidence at sentencing. First, introducing mitigation evidence at sentencing might have resulted in the trial court rejecting the plea agreement. Young was facing the

death penalty, and Young's attorneys had a well-founded belief that Young might have received it. Lead counsel testified that there was a "tremendous" possibility that Young would have received the death penalty, in part due to the following reasons: (1) the victim was 78 when she was murdered; (2) the victim was not involved in any criminal activity; (3) the murder occurred inside the victim's home; (4) the scene of the crime was violent; (5) there was some evidence of sexual assault; and (6) Young was the victim's neighbor. It is not ineffective assistance of counsel for an attorney, after investigating the case, to advise his client to plead guilty in order to obtain a lesser sentence. *Osborne v. Commonwealth,* 992 S.W.2d 860, 864 (Ky. App. 1998). Because presenting mitigation evidence to the circuit court might have resulted in the circuit court withdrawing Young's plea, and because Young faced a significant possibility of receiving the death penalty at trial, counsel was not ineffective for failing to introduce mitigation evidence at sentencing.

Young's third argument involves two different elements. First, Young asserts that his attorneys broke the attorney-client privilege. Second, Young asserts that, as a direct result, his mother was able to coerce him into pleading guilty. Specifically, Young alleges that, even though he instructed his attorneys not to talk to his mother about some details of the case, they approached her anyway and told her Young was facing the death penalty. Thereafter, in a jail visit, Young's mother began crying and told him, "Son, don't let them kill you."

Young testified that he would not have pleaded guilty if he had not spoken to his mother.

Under Kentucky Rules of Evidence (KRE) 503(b) a client may elect not to disclose confidential information "made for the purpose of facilitating the rendition of professional legal services[.]" However, the communication must be "[b]etween the client or a representative of the client and the client's lawyer or a representative of the lawyer," "[b]etween the lawyer and a representative of the lawyer," "[b]etween representatives of the client or between the client and a representative of the client," or "[a]mong lawyers and their representatives representing the same client." KRE 503(b)(1)–(5). The Commonwealth's intention to seek the death penalty was a communication from the *Commonwealth* to Young and his attorneys, not a communication from Young to his attorneys or vice versa. Therefore, the disclosure in the present case did not violate the attorney-client privilege.

However, even if Young's attorneys' conduct had violated the attorney-client privilege, we cannot say "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59, 106 S.Ct. at 370. "A guilty plea is involuntary if the defendant lacked full awareness of the direct consequences of the plea or relied on a misrepresentation by the Commonwealth or the trial court." *Edmonds v. Commonwealth*, 189 S.W.3d 558, 566 (Ky. 2006). No unfulfilled promises were made to Young, and he was fully aware of the consequences of his

decision. Though his mother's appeal may have been emotional, it was in no way threatening or coercive. Furthermore, as mentioned above, Young's decision to plead guilty to avoid the death penalty was a logical one. Because Young cannot demonstrate prejudice, and his plea was knowingly and voluntarily entered, this claim of ineffective assistance of counsel must fail.

Finally, Young argues his plea was not knowingly and voluntarily made because he had ingested methamphetamine and various prescription medications before he pleaded guilty. During his plea colloquy, Young admitted to taking prescription medication. Thereafter, Young's lead counsel stated that his prescription medication assisted his ability to understand the hearing. Young said nothing about ingesting methamphetamine.[1] Young also contended that his prescription medication made him act erratically. Finally, he stated that a physician in prison informed him his dosage was too high for one of his prescriptions.

The record before this Court refutes Young's claim that his judgment was impaired when he entered his guilty plea. Prior to Young's sentencing, his attorneys retained the services of Dr. David Walker as a mental health expert. After examining Young for four days, Dr. Walker determined that Young was

[1] During his RCr 11.42 hearing, Young asserted that he told his attorneys he had ingested methamphetamine, but they instructed him not to report the matter to the court. His attorneys testified that he never told them he was on methamphetamine. Though the circuit court did not make a finding as to whom it found to be credible, this issue is not dispositive to our analysis of the validity of Young's plea.

mentally ill but competent to stand trial. Dr. Walker also explained that Young's medication helped him understand and participate in the legal proceedings.

Throughout Young's *Boykin* colloquy, Young was engaged and appropriately responsive to the circuit court's questioning. He appeared to comprehend the circuit court's questions and respond with reasoned answers. Additionally, he swore under oath that he had fully understood the proceedings. "Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible." *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S.Ct. 1621, 1629, 52 L.Ed.2d 136 (1977). Young's sworn statements during the plea colloquy, his alert and responsive demeanor, and Dr. Walker's report together constitute substantial evidence that Young possessed the capacity to comprehend the proceedings. *See Edmonds*, 189 S.W.3d at 569. Finally, we note that, as analyzed above, Young's decision to plead guilty and avoid the death penalty was rational. The circuit court did not err when it determined that Young's plea was knowingly and voluntarily entered.

Accordingly, the Monroe Circuit Court's orders denying Young relief under RCr 11.42 is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Brandon Young, *pro se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

Bryan D. Morrow
Assistant Attorney General
Frankfort, Kentucky