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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001266-MR

DALTON L. STIDHAM — APPELLANT

v.

APPEAL FROM PERRY CIRCUIT COURT
HONORABLE WILLIAM ENGLE, III, JUDGE
ACTION NO. 13-CR-00020

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, JONES, AND K. THOMPSON, JUDGES.

DIXON, JUDGE: Dalton L. Stidham appeals a Perry Circuit Court order that denied his motion for post-conviction relief pursuant to RCr 11.42. Finding no error, we affirm.

On January 15, 2013, Stidham confessed to the murders of Caitlyn Cornett (the mother of his son), Jackie Cornett, and Taylor Cornett. In a

videotaped interview with police, Stidham asserted he believed his son was being physically abused while in Caitlyn's custody, and he purchased a gun to take care of the situation. That night, he met Caitlyn in a parking lot, shot her, and then shot the other two individuals who were in Caitlyn's vehicle. Stidham was indicted on three counts of capital murder, and attorneys from the Department of Public Advocacy were appointed to represent him. Prior to trial, counsel filed a motion to exclude the death penalty based on serious intellectual disability. On April 22, 2014, the trial court held a lengthy evidentiary hearing on the motion, and defense counsel presented three expert opinions indicating Stidham suffered from mild mental retardation and brain dysfunction. The court ultimately continued the hearing until April 25, 2014. When the parties appeared for the remainder of the hearing, Stidham informed the court he wanted to accept the Commonwealth's offer on a plea of guilty. The plea agreement indicated Stidham would plead guilty to three counts of murder in exchange for concurrent sentences of life imprisonment without the possibility of parole. The court engaged in a lengthy plea colloquy with Stidham, and he admitted he intentionally shot and killed each of the victims. At the end of the colloquy, the court noted on the record that it found Stidham was capable of participating in his own defense and that he was competent to enter a guilty plea. The court accepted Stidham's plea and

subsequently imposed a final sentence consistent with the terms of the plea agreement.

On March 27, 2017, Stidham filed a motion to vacate his conviction due to alleged ineffective assistance of trial counsel. Stidham asserted his trial attorneys were deficient by advising him to enter a guilty plea and avoid a potential death sentence without first securing a ruling on the pending motion to exclude the death penalty due to intellectual disability. Stidham further contended his attorneys rendered ineffective assistance by failing to develop an extreme emotional disturbance (EED) defense to the murder charges. The trial court rendered a written order denying the RCr 11.42 motion without an evidentiary hearing. This appeal followed.

Stidham now raises the same arguments on appeal, and he contends the trial court improperly denied his RCr 11.42 motion without an evidentiary hearing.

Where, as here, ineffective assistance of counsel is alleged in the context of a guilty plea proceeding, the movant must 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

pleaded guilty, but would have insisted on going to trial." *Sparks v. Commonwealth*, 721 S.W.2d 726, 727-28 (Ky. App. 1986) (citing *Hill v. Lockhart*, 474 U.S. 52, 106 S. Ct. 366, 370, 80 L. Ed. 2d 203 (1985)). Furthermore, a trial court must hold an evidentiary hearing only "if there is a material issue of fact that cannot be conclusively resolved, *i.e.*, conclusively proved or disproved, by an examination of the record." *Fraser v. Commonwealth*, 59 S.W.3d 448, 452 (Ky. 2001). In the case at bar, our review indicates the record clearly refutes Stidham's allegations of ineffective assistance; consequently, the court was not required to hold an evidentiary hearing. *Id.*

Stidham first asserts his attorneys were ineffective by advising him to enter a guilty plea to avoid a potential death sentence while the motion to exclude the death penalty remained pending. Stidham contends, had counsel informed him of the pending motion, he would not have pled guilty.

It is well-settled that "[a]dvising a defendant to plead guilty does not, in and of itself, constitute ineffective assistance of counsel." *Russell v. Commonwealth*, 992 S.W.2d 871, 875 (Ky. App. 1999). Here, Stidham's defense attorneys vigorously argued in support of their motion to exclude the death penalty; however, while the motion was pending, the Commonwealth offered a favorable plea agreement which eliminated the possibility of the death penalty. The Commonwealth's evidence included Stidham's confession that he

intentionally shot each of the victims with a gun he had purchased earlier the same day. Further, Stidham's confession established that he committed the crimes while his young son was asleep in his vehicle. At the time the plea offer was communicated, the death penalty was a potential sentence, and Stidham's attorneys advised him to accept the favorable plea agreement. "A reviewing court, in determining whether counsel was ineffective, must be highly deferential in scrutinizing counsel's performance, and the tendency and temptation to second guess should be avoided." *Id*. Here, counsel was faced with overwhelming evidence of Stidham's guilt and a potential death sentence. We are not persuaded Stidham's defense attorneys' advice to accept the plea agreement, thereby ensuring he would not receive the death penalty, constituted ineffective assistance of counsel.

Stidham also asserts he received ineffective assistance of counsel because his attorneys failed to investigate and prepare an EED defense based on Stidham's custody dispute with Caitlyn and his belief their son was being abused by her family.

"Extreme emotional disturbance is 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)).

Here, Stidham has not cited any specific evidence of a sudden and uninterrupted triggering event that would support an EED defense. Stidham's own confession established that he purchased a gun, arranged a meeting with Caitlyn to exchange custody of their son, and then intentionally shot Caitlyn and her family members when they arrived to pick up the child. Under the facts presented here, we are not persuaded Stidham's attorneys rendered ineffective assistance by failing to investigate an EED defense.

For the reasons stated herein, we affirm the order of the Perry Circuit Court.

ALL CONCUR.

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