

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001950-MR

WILLIAM BLANCET, SR.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 11-CR-00233-001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MAZE, NICKELL, AND K. THOMPSON, JUDGES.

MAZE, JUDGE: William Lee Blancet, Sr. appeals from an order of the Fayette

Circuit Court denying his motion to vacate his conviction pursuant to RCr¹ 11.42.

He argues that there was evidence supporting his claims of ineffective assistance of

¹ Kentucky Rules of Criminal Procedure.

counsel and that the trial court erred by denying the motion without conducting an evidentiary hearing. Finding no error, we affirm.

In 2013, Blancet pleaded guilty to three counts of murder, one count of first-degree robbery, one count of tampering with physical evidence, one count of first-degree possession of a controlled substance, and two counts of first-degree wanton endangerment. In accord with his plea agreement, the trial court imposed multiple sentences of life without the possibility of parole (three counts), as well as other determinate terms. In July 2016, Blancet filed a *pro se* motion for relief from his sentences pursuant to RCr 11.42, along with motions to proceed *in forma pauperis*, for appointment of counsel, and for an evidentiary hearing. The Department of Public Advocacy was appointed, but later filed a motion to withdraw, stating that the appeal was not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense. KRS² 31.110(2). *See also Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400, 18 L. Ed. 2d 493 (1967).

After considering the motion, the trial court found that Blancet's allegations of ineffective assistance of counsel were refuted by the record.

² Kentucky Revised Statutes.

Consequently, the court denied the motion without an evidentiary hearing. This appeal followed.

Blancet again argues that his guilty plea was tainted by ineffective assistance of his trial counsel. In order to maintain an ineffective assistance of counsel claim, a movant must satisfy a two-part test showing that his counsel's performance was deficient and that the deficiency caused actual prejudice affecting the outcome of the proceeding. *Strickland v. Washington*, 466 U.S. 668, 686-87, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984); *Gall v. Commonwealth*, 702 S.W.2d 37 (Ky. 1985). The burden falls on the movant to overcome a strong presumption that counsel's assistance was constitutionally sufficient. *Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065; *Commonwealth v. Pelfrey*, 998 S.W.2d 460, 463 (Ky. 1999).

In cases involving a guilty plea, the movant must prove that his counsel's deficient performance so seriously affected the outcome of the plea process that, but for counsel's errors, there is a reasonable probability that the movant would not have pleaded guilty but would have insisted on going to trial. *See Commonwealth v. Pridham*, 394 S.W.3d 867, 876 (Ky. 2012). *See also Hill v. Lockhart*, 474 U.S. 52, 58, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985) and *Phon v. Commonwealth*, 51 S.W.3d 456, 459-60 (Ky. App. 2001). An evidentiary hearing is necessary only where the record does not conclusively refute the

allegations in the motion. *Fraser v. Commonwealth*, 59 S.W.3d 448, 452 (Ky. 2001).

Blancet argues that trial counsel failed to fully discuss with him the various defenses which existed or to pursue a reasonable defense strategy. Blancet further asserts that his trial counsel failed to obtain expert testimony to support his defense. Finally, he contends that counsel failed to consult with him at jail, was frequently rude when he did, and pressured him to accept the guilty plea.

In rejecting these assertions, the trial court noted that Blancet's statements when entering his plea directly refute his assertions. When entering his plea, Blancet was asked if he had the time he needed to discuss his representation and plea with his counsel, if he was satisfied with that representation, if he understood the facts with which he was charged, and if his counsel discussed possible defenses or lesser included offenses with him. Blancet replied to each of the questions affirmatively. The trial court further asked Blancet if he had any complaints regarding his plea, to which Blancet replied that he did not.

As the trial court noted, such pronouncements under oath in open court raise a strong presumption that counsel's assistance was constitutionally sufficient. *Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065. In cases involving a guilty plea, the United States Supreme Court has stated that the traditional test is "whether the plea represents a voluntary and intelligent choice among the

alternative courses of action open to the defendant.” *Hill*, 474 U.S. at 56, 106 S. Ct. at 369 (quoting *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 164, 27 L. Ed. 2d 162 (1970)). The Kentucky Supreme Court has also held that the guilty plea waiver signed by a defendant along with video evidence in the record of the guilty plea proceedings must be sufficient to show that the defendant knowingly pleaded guilty. *Commonwealth v. Crawford*, 789 S.W.2d 779, 780 (Ky. 1990). Additionally, the Court emphasized that “[t]he validity of a guilty plea is determined . . . from the totality of the circumstances surrounding it.” *Id.* (quoting *Kotas v. Commonwealth*, 565 S.W.2d 445, 447 (Ky. 1978)). Our Supreme Court has also emphasized the standard that “[a] plea of guilty entered by one fully aware of the direct consequences . . . must stand unless induced by threats . . . misrepresentation . . . or perhaps by promises that are by their nature improper” *Pridham*, 394 S.W.3d at 876 (quoting *Brady v. United States*, 397 U.S. 742, 755, 90 S. Ct. 1463, 1472, 25 L. Ed. 2d 747 (1970)).

In the current case, Blancet has not identified any specific facts supporting his assertions regarding his counsel’s performance or alleged deficiencies. In addition to Blancet’s statements at his guilty plea, the trial court noted that his counsel conducted extensive discovery prior to entry of the plea. Counsel sought and obtained funding for expert witnesses. The trial court ordered Blancet evaluated for competency and counsel successfully moved to allow a

defense psychologist to be present for the interviews and testing. Although Blancet complained to the trial court about the performance of his trial counsel, the court conducted a hearing and found no irretrievable breakdown in communication between Blancet and his counsel. Under the circumstances, the record clearly supported the trial court's conclusion that Blancet failed to establish either deficient performance by his trial counsel or that any alleged deficiencies affected his decision to enter a guilty plea. The record clearly shows that Blancet received necessary information from his counsel to make a decision to enter a plea.

Indeed, the evidence of Blancet's guilt was overwhelming. Blancet confessed to the killings and there was other substantial evidence supporting the charges. In addition, the Commonwealth was seeking the death penalty based on two aggravating circumstances. We agree with the trial court that there was no reasonable probability that he would have chosen to go to trial. Therefore, we conclude that the trial court properly denied Blancet's RCr 11.42 motion without an evidentiary hearing.

Accordingly, we affirm the order of the Fayette Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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