

RENDERED: SEPTEMBER 6, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2017-CA-001990-MR

DONALD SCOTT JEFFRIES

APPELLANT

v. APPEAL FROM CARROLL CIRCUIT COURT  
HONORABLE R. LESLIE KNIGHT, JUDGE  
ACTION NO. 14-CR-00052

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; SPALDING AND K. THOMPSON,  
JUDGES.

CLAYTON, CHIEF JUDGE: Donald Jeffries appeals pro se from a Carroll Circuit Court order denying his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion without a hearing. Jeffries received a total sentence of fifteen years after pleading guilty to three counts of assault in the first degree and other charges. He

argues the judgment should be vacated because his counsel provided ineffective assistance in the guilty plea proceedings. We affirm.

We summarize the underlying facts of this case as they are set forth in the report of Kentucky State Trooper David Roberts, the investigating officer: On February 26, 2014, Jeffries was involved in a serious motor vehicle accident after his jeep crossed the center line of Highway 42 and struck an oncoming car. The three occupants of the car were seriously injured. Trooper Roberts reported that Jeffries was the only occupant of the jeep and he appeared very lethargic and combative when he was removed from the vehicle by EMS personnel and transported to the Carroll County Hospital. Roberts learned that Jeffries had recently sought treatment for a shoulder injury at the hospital and was prescribed three controlled substances: Clonazepam, Trazodone, and Baclofen. The side effects of these medications are drowsiness and sedation.

Trooper Roberts obtained a search warrant for Jeffries's residence. Jeffries's brother, Greg, who also lived at the residence, showed the trooper Donald's bedroom. Roberts found three bottles containing the prescribed medications in the room. The prescriptions had been filled on February 24, 2014. The bottles contained far fewer pills than they would have if Donald had taken them according to the prescription directions. For example, Jeffries was prescribed sixty Clonazepam tablets to be taken twice daily. On the date the trooper executed

the warrant, February 26, 2014, there should have been fifty-five tablets remaining in the bottle, but it contained only eighteen tablets. Greg Jeffries told the trooper that no one had been at the house since Donald left and that he had never seen his brother give away or sell any of his medication. He stated that Donald was very protective of his medication. He also provided an audio recorded statement that Donald had gone to bed the night before the accident heavily under the influence of the prescription medications.

Trooper Roberts interviewed Donald Jeffries in his hospital room. Jeffries stated he had no memory of the traffic accident and the last thing he did remember was being at his residence. He admitted that he took too many prescription medications but felt his daughter had stolen some of them. He claimed that she had been at his residence after the prescriptions had been filled. He told the officer that he had “really screwed up” and that the cause of the accident was his taking more than the prescribed amounts of his medications.

On March 6, 2015, Trooper Roberts arrested Jeffries, who stated he had taken too much of his prescribed medications prior to driving on February 24, 2014, and he felt this was the cause of the accident. He stated that on the day before the accident he had not eaten anything but had taken one Trazodone tablet, six Clonazepam, and seven Baclofen. He was extremely sedated and did not really remember going to bed. He remembered taking three Baclofen tablets when he

awoke on February 26, 2014, the day of the accident, but did not recall why he went out in his vehicle that morning.

A grand jury charged Jeffries with three counts of assault in the first degree, one count of criminal mischief and one count of driving a motor vehicle under the influence of intoxicants (with aggravators). Jeffries entered a plea of guilty to all the charges. He was sentenced in accordance with his plea agreement to a total sentence of fifteen years, a fine of \$1,000, and a temporary license revocation. Final judgment was entered on June 27, 2014. On June 9, 2017, Jeffries filed a motion pursuant to RCr 11.42, alleging ineffective assistance of counsel. The trial court denied the motion without a hearing and this appeal followed.

“The test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Sparks v. Commonwealth*, 721 S.W.2d 726, 727 (Ky. App. 1986) (citing *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 164, 27 L.Ed.2d 162 (1970)). “A showing that counsel’s assistance was ineffective in enabling a defendant to intelligently weigh his legal alternatives in deciding to plead guilty has two components: (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.” *Id.* at 727-28 (citing *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 370, 80 L.Ed.2d 203 (1985); *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *McMann v. Richardson*, 397 U.S. 759, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 763 (1970)).

Jeffries argues that his physician should not have prescribed Trazodone to be taken with Clonazepam and Baclofen because this combination of medications causes extremely high sedation. He contends that his physician was culpable of the crimes and would have been convicted by a jury.

This argument is an attack on the sufficiency of the evidence supporting the conviction and consequently cannot be raised under RCr 11.42.

A defendant who elects to unconditionally plead guilty admits the factual accuracy of the various elements of the offenses with which he is charged. By such an admission, a convicted appellant forfeits the right to protest at some later date that the state could not have proven that he committed the crimes to which he pled guilty.

*Taylor v. Commonwealth*, 724 S.W.2d 223, 225 (Ky. App. 1986).

In any event, Jeffries’s attempts to incriminate his physician are without merit. The toxicology report performed by Dr. Gregory J. Davis found Clonazepam concentrations in Jeffries’s blood well above therapeutic levels and

Baclofen in the upper therapeutic range, which the doctor explained did not mean “safe for operating a motor vehicle.” The doctor opined that Jeffries was under the influence of excessive doses of at least two central nervous system depressant drugs (Clonazepam and Baclofen) and impaired for the purposes of performing complex tasks such as operating an automobile. The report further states that although the laboratories did not test for Trazodone, it would have contributed to the depressive effects of the other medications. This analysis does not mean that Jeffries’s prescribing physician was responsible for the traffic accident; as Trooper Roberts discovered when executing the search warrant, and Jeffries later admitted, he had ingested far more medication than the amounts prescribed by his physician.

Jeffries also argues that he was entitled to the services of an expert toxicologist. According to Jeffries, his defense counsel moved the trial court for the appointment of an expert toxicologist to assist in his defense and on May 5, 2014, the trial court entered an order granting the motion. Jeffries claims his attorney did not procure the expert and instead advised his client to plead guilty. Jeffries argues he was ineffective for advising this course of action.

We are unable to locate the motion or the order in the record before us. Even if we assume the trial court ordered the appointment of a defense toxicologist, defense counsel was not ineffective for choosing to advise Jeffries to accept the guilty plea offer. The evidence against Jeffries was considerable. The

toxicology report showed the presence of Clonazepam and Baclofen in Jeffries's body. The containers of his medications recovered by the police contained far fewer pills than they would have if he had been taking them in accordance with his physician's instructions. In light of this evidence, his attorney was not ineffective for advising him to accept the offer of a fifteen-year sentence. First-degree assault carries a possible penalty of between ten and twenty years. A jury could well have imposed the maximum penalty in light of Jeffries's admission to Trooper Roberts that he took more drugs than his physician had prescribed, and the serious physical injuries his conduct inflicted on the car accident victims, one of whom was a young child. Jeffries was charged with three counts of assault in the first degree, a class B felony carrying a penalty of 10 to 20 years; one count of criminal mischief in the first degree, a class D felony carrying a penalty of 1 to 5 years; and one count of operating a motor vehicle under the influence. Had the jury recommended the sentences be served consecutively, Jeffries could have faced a sentence of 65 years. His defense counsel was not ineffective for advising him to accept the plea offer of a fifteen-year sentence.

Next, he contends that the testimony of Trooper Roberts and the EMTs would not have been admissible at trial, which would have fatally undermined the Commonwealth's case against him. This argument is based on a misunderstanding of the law. Police officers are permitted to give opinion

testimony regarding a defendant's intoxication. *Commonwealth v. Rhodes*, 949 S.W.2d 621, 623 (Ky. App. 1996). As to the EMTs, Jeffries provides no reason why a trial judge would not permit them to be qualified as expert witnesses or allow their testimony as lay witnesses based on their personal observations.

Finally, Jeffries argues that his defense counsel acted as a "second prosecutor" who did nothing to help his case and was burdened by a conflict of interest. He does not provide any specific support for this argument and consequently fails to meet the threshold for RCr 11.42 relief. "[V]ague allegations . . . do not warrant an evidentiary hearing and warrant summary dismissal of the RCr 11.42 motion." *Mills v. Commonwealth*, 170 S.W.3d 310, 330 (Ky. 2005), *overruled on other grounds by Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009).

For the foregoing reasons, the order of the Carroll Circuit Court denying Jeffries's RCr 11.42 motion is affirmed.

ALL CONCUR.



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