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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000302-MR

BOBBY ALDRIDGE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BRIAN C. EDWARDS, JUDGE
ACTION NO. 12-CR-003753-001

COMMONWEALTH OF KENTUCKY

APPELLEE

AND

NO. 2018-CA-000374-MR

BOBBY ALDRIDGE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 14-CR-002154

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: CLAYTON, CHIEF JUDGE; NICKELL AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Bobby Aldridge appeals from two orders denying his Kentucky Rules of Criminal Procedure (RCr) 11.42 motions alleging ineffective assistance of counsel. Appellant raises multiple ineffective assistance of counsel arguments concerning his pleading guilty in two criminal cases. We find no error and affirm.

FACTS AND PROCEDURAL HISTORY

On December 10, 2012, the Jefferson County Grand Jury, in case 12-CR-003753-001, returned an indictment charging Appellant with two counts of first-degree robbery.¹ Appellant left Kentucky before he could be arrested. Sometime after this, Appellant was imprisoned at the Shawnee Correctional Center in Illinois.

In 2014, the Commonwealth Attorney of Oldham County, Kentucky filed an Interstate Agreement on Detainers (IAD) seeking to transport Appellant from Illinois to Oldham County in order to face charges in that county. Appellant was eventually returned to Kentucky and sent to Oldham County. Upon learning that Appellant was now in Kentucky, the Jefferson County Commonwealth

¹ Kentucky Revised Statutes (KRS) 515.020.

Attorney filed a motion in 12-CR-003753-001 seeking to schedule a pretrial conference and trial date. Appellant was transported from the Oldham County Jail to the Jefferson County Courthouse and appeared before the trial court on April 28, 2014.

During the pendency of the robbery case, Appellant became a suspect in a cold case in Jefferson County from the year 2000. The Jefferson County Grand Jury returned an indictment charging Appellant with one count of first-degree rape² and one count of first-degree burglary. This indictment became 14-CR-002154.

On October 20, 2015, Appellant pleaded guilty to the charges in each case. In exchange, the Commonwealth recommended a sentence of 10 years' imprisonment on each count, with the sentences running concurrently. On December 22, 2015, the trial court entered a judgment in accordance with the Commonwealth's recommendation.

On December 1, 2016, Appellant filed identical motions under RCr 11.42 to vacate his sentences. Appellant claimed that the Commonwealth violated the provisions of the IAD; therefore, his charges should have been dismissed and that his trial counsel was ineffective for not making that argument. The Commonwealth responded in each case and argued that there was no violation of

² KRS 510.040(1)(a).

the IAD provisions. The court in 14-CR-002154 denied the motion. The court found there was no violation of the IAD provisions; therefore, trial counsel was not ineffective. Before the court in 12-CR-003753-001 could rule on the motion, Appellant filed a reply to the Commonwealth's response. Appellant raised a number of new arguments in this reply. The court in 12-CR-003753-001 eventually ruled on the RCr 11.42 motion. The court stated that it was adopting in total the findings and conclusions of the other court's order. The order did not discuss in any way the new issues raised in Appellant's reply. No RCr 11.42 hearing was held in either case. This appeal followed.

ANALYSIS

We must first note that the only issue properly before us is the IAD issue. The other issues raised in Appellant's brief were those he raised for the first time in his RCr 11.42 reply before the trial court. A reply or brief cannot raise new issues for the first time. *Goff v. Justice*, 120 S.W.3d 716, 724 (Ky. App. 2002). Although not specifically stated, we believe this is why the court in 12-CR-003753-001 made no mention of these new issues in its order. We will only rule on the IAD issue because the other arguments were not properly raised and preserved.

This case involves a guilty plea; therefore, our analysis is a little different from the usual ineffective assistance of counsel cases.

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.

Evaluating the totality of the circumstances surrounding the guilty plea is an inherently factual inquiry which requires consideration of "the accused's demeanor, background and experience, and whether the record reveals that the plea was voluntarily made." While "[s]olemn declarations in open court carry a strong presumption of verity," "the validity of a guilty plea is not determined by reference to some magic incantation recited at the time it is taken [.]". The trial court's inquiry into allegations of ineffective assistance of counsel requires the court to determine whether counsel's performance was below professional standards and "caused the defendant to lose what he otherwise would probably have won" and "whether counsel was so thoroughly ineffective that defeat was snatched from the hands of probable victory." Because "[a] multitude of events occur in the course of a criminal proceeding which might influence a defendant to plead guilty or stand trial," the trial court must evaluate whether errors by trial counsel significantly influenced the defendant's decision to plead guilty in a manner which gives the trial court reason to doubt the voluntariness and validity of the plea.

Bronk v. Commonwealth, 58 S.W.3d 482, 486-87 (Ky. 2001) (citations omitted).

Appellant's argument regarding ineffective assistance of counsel revolves around the detainer filed in this case. The IAD rules and procedures are

found in KRS 440.450. Appellant's argument specifically relies on KRS 440.450 Art. III. KRS 440.450 Art. III states that if a detainer has been filed against a prisoner being held in another state, the prisoner can write to the prosecuting officer's jurisdiction informing it where he is located and that he wants to dispose of the pending criminal charges against him. This notice also serves as notice to all other jurisdictions in the state that have filed a detainer against the prisoner. The warden of the prison in which the prisoner is located is also required to inform the prisoner of any detainers filed against him from all jurisdictions. Any prosecuting jurisdiction that has filed a detainer then has 180 days to bring the defendant to trial. If this time lapses without a trial, the charges are dismissed with prejudice.

Appellant argues that when he was informed of the Oldham County detainer, he should have also been notified of the Jefferson County charges, and because he was not, the charges were eligible to be dismissed pursuant to KRS 440.450 Art. III. He claims his counsel was ineffective for not seeking to dismiss the Jefferson County charges because they violated the IAD rules.

The trial court denied the RCr 11.42 motion because it found that no detainer had been filed from Jefferson County and the IAD rules only apply when a detainer has been filed. We agree. A plain reading of the IAD statute indicates that a prisoner is entitled to know about any detainers filed against him and can

seek timely disposition of any charges stemming from these detainers. Only the charges arising from the filed detainers can be dismissed if the IAD rules and procedures are violated. Here, only Oldham County filed a detainer. Appellant cites to no statute or case law which requires detainers to be filed or prohibits Jefferson County prosecutors from seeking Appellant's presence once Appellant has been returned to Kentucky pursuant to a detainer from another Kentucky jurisdiction.

Appellant was only entitled to notice of detainers filed against him and the procedures listed in the IAD statute only apply to filed detainers. Because Jefferson County did not file a detainer, it would have been futile for Appellant's trial counsel to seek dismissal of the charges. In fact, Appellant filed a *pro se* motion seeking to dismiss the charges based on a violation of the IAD rules and procedures before he pleaded guilty. The trial court denied the motion because no Jefferson County detainers were filed.

CONCLUSION

Appellant's trial counsel was not ineffective for failing to file a motion to dismiss based on a violation of the IAD rules. Counsel made no error as to this issue; therefore, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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