

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000994-MR

SHAUNE M. PEYTON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JOHN E. REYNOLDS, JUDGE
ACTION NO. 17-CR-00836

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, NICKELL AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Shaune Peyton appeals from an order of the Fayette Circuit Court which denied his Kentucky Rule of Criminal Procedure (RCr) 11.42 motion alleging ineffective assistance of counsel. On appeal, Appellant argues that there was insufficient evidence to convict him and that his trial counsel was

ineffective for failing to file a motion to suppress evidence. We find no error and affirm.

In March of 2017, a confidential informant made two controlled drug purchases from Appellant. Lexington, Kentucky police officers then sought and obtained a search warrant for Appellant's green car, home, and person. On March 29, 2017, police officers executed the search warrant. In the green car, officers found \$2,880, marijuana residue, and a mobile phone containing multiple text messages requesting illegal drugs. In the house, officers found cut pieces of bagging material and marijuana residue. After searching the house, officers sought permission to search a blue car also owned by Appellant. Appellant declined. On March 30, 2017, officers obtained and executed a search warrant on Appellant's blue car. Inside the blue car officers found scales, a jar of marijuana, and a handgun.

Appellant was later indicted for being a convicted felon in possession of a handgun, trafficking in marijuana (less than eight ounces), possession of drug paraphernalia, and of being a persistent felony offender in the second degree. Appellant accepted a plea offer from the Commonwealth and entered a guilty plea to all of the charges. Appellant was sentenced to a total of ten years' imprisonment.

On June 5, 2018, Appellant filed an RCr 11.42 motion alleging ineffective assistance of counsel. Appellant claimed he was denied effective assistance of counsel because his trial counsel did not move to suppress the evidence seized by the police from his home and two cars. The trial court denied the motion without a hearing. This appeal followed.

Appellant's first argument on appeal is that there was insufficient evidence to support his conviction and that there were mistakes in the warrants procured by the police. These issues cannot be appealed because Appellant entered a guilty plea. "[T]he law is clear that '[e]ntry of a voluntary, intelligent plea of guilty has long been held by Kentucky Courts to preclude a post-judgment challenge to the sufficiency of the evidence.'" *Bishop v. Commonwealth*, 357 S.W.3d 549, 552 (Ky. App. 2011) (citing *Taylor v. Commonwealth*, 724 S.W.2d 223, 225 (Ky. App. 1986)).

Appellant's other argument on appeal is that his trial counsel was ineffective for failing to move to suppress the evidence obtained by the police. Appellant argues that the search of his home and two cars was unlawful and that the evidence obtained should have been suppressed.

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).

We believe that the trial court did not err in denying Appellant’s motion. Trial counsel’s performance was not deficient in this case. Appellant’s home and two cars were searched pursuant to two valid search warrants. If Appellant’s counsel had filed a motion to suppress the evidence, it would have been denied. Police officers had ample evidence to support their being granted the

search warrants. Police officers observed a confidential informant make two controlled purchases of illegal narcotics from Appellant. This supported the granting of the first search warrant. Then, after searching Appellant's home and green car, officers obtained additional evidence of drug trafficking to support the second search warrant. Appellant's trial counsel was not ineffective in this instance because filing a motion to suppress would have been futile.

Based on the foregoing, we affirm the judgment of the Fayette Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Shaune Peyton, *pro se*
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BRIEF FOR APPELLEE:

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