

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-001428-MR
AND
NO. 2001-CA-002227-MR

LUCIAN SPILLER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS E. McDONALD, JUDGE
ACTION NOS. 00-CR-000812 & 00-CR-000935

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: HUDDLESTON, PAISLEY, AND TACKETT, JUDGES.

TACKETT, JUDGE: Lucian Spiller appeals from an order of the Jefferson Circuit Court denying his request to vacate his conviction pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42 without holding an evidentiary hearing. We affirm.

Spiller was arrested on January 26, 2000, during the execution of a warrant to search the premises of 3211 Virginia Avenue, Louisville, Kentucky, for narcotics and other items pertaining to drug trafficking. Individual packages of crack

cocaine, marijuana, pills, cash, and a crack pipe were among the evidence seized during the search. Spiller was charged with trafficking in a controlled substance in the first degree and possession of marijuana. His sister, Paulette Spiller, was arrested and charged with possession of a controlled substance in the first degree.

In addition to the charges placed against him at the time of his arrest, Spiller was indicted for being a persistent felony offender in the first degree. He retained an attorney who filed a pretrial motion requesting suppression of the evidence. In addition, his attorney asked the trial court to require the Commonwealth to disclose the identity of the expert witness, the subject matter of his testimony, and the basis for his opinions. Finally, counsel requested a preliminary hearing to determine admissibility of the expert's testimony. Nevertheless, Spiller eventually entered a guilty plea to possession of marijuana and the amended charges of possession of a controlled substance and being a persistent felony offender in the second degree. He was sentenced to five years' imprisonment, enhanced to eight years, while Paulette allegedly was admitted to the Jefferson County Drug Court program.

Subsequently, Spiller filed a motion to vacate his conviction, pursuant to RCr 11.42, alleging that his attorney rendered ineffective assistance of counsel and that his guilty

plea was not knowingly, intelligently and voluntarily entered. As the basis for these claims, Spiller alleged that he was not a resident of 3211 Virginia Avenue, that the Commonwealth had not proven any link between him and any of the drugs found on the premises, and that his attorney told him he had no defense to the charges against him. Spiller requested an evidentiary hearing on these issues; however, the trial court denied his motion for post-conviction relief without a hearing. This appeal followed.

Spiller argues that he was deprived of effective assistance of counsel by his attorney's failure to prepare and present a defense to the charges. Although he entered a plea of guilty and admitted that he possessed the cocaine, Spiller now contends that Paulette was the only resident of 3211 Virginia Avenue, that his attorney knew that Spiller resided at 2126 Muhammed Ali Blvd., Apt. 3, and that there was nothing to link Spiller to the coat where the cocaine was found. We would first point out that, by Spiller's own admission, his attorney investigated the issue of where he resided. Nevertheless, he asserts that his attorney told him to plead guilty.

A defendant who unconditionally pleads guilty to criminal charges admits their factual accuracy and cannot later raise as an issue the Commonwealth's failure to prove his guilt. Skeans v. Commonwealth, Ky. App., 912 S.W.2d 455 (1996). In

order to show ineffective assistance of counsel in the context of a guilty plea, a defendant must show that his attorney's performance was deficient and that, but for that deficiency, he would not have pled guilty but would have insisted on a jury trial. Taylor v. Commonwealth, Ky. App., 724 S.W.2d 223 (1986). Spiller was facing a potential sentence of ten to twenty years on his original charges; however, his counsel secured an amendment to the more serious charges leading to a sentence of eight years. Advising a client to plead guilty to reduced charges in order to obtain a lesser sentence after investigating his case, is not ineffective representation. Commonwealth v. Campbell, 415 S.W.2d 614 (1967).

Spiller also claims that his guilty plea was not knowingly, intelligently and voluntarily given. The United States Supreme Court has outlined a procedure for the trial court to use when documenting a valid waiver of constitutional rights such as that which occurs during a guilty plea. Boykin v. Alabama, 395 U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969). Before Spiller pled guilty to the amended charges against him, the Commonwealth stated its recommendation on the record, and the trial court questioned Spiller's counsel regarding the substance of the plea agreement and whether counsel had explained Spiller's constitutional rights and the facts he was being asked to admit. There followed a lengthy discussion

between the trial court and Spiller during which Spiller stated that he wished to plead guilty in reliance on the Commonwealth's recommendation. The trial court reviewed each of Spiller's rights, including the right to a jury trial, the right against self-incrimination, the right to cross-examine adverse witnesses, the right to present testimony on his behalf and the right to appeal a conviction. Spiller waived each of these rights individually and acknowledged that he understood that pleading guilty to the charges against him could result in enhanced penalties in the event he committed a subsequent felony offense.

Spiller stated that he was not under the influence of any alcohol or narcotics, nor was he being treated for any emotional or psychological disorder. In addition, Spiller testified that he had completed high school and two years of college and that he had read the Commonwealth's written offer and the motion to enter a guilty plea. He further stated that he was satisfied with his attorney's performance and that he did not wish for any additional time to talk with his attorney before pleading guilty. Clearly, the trial court engaged in sufficient dialogue with Spiller to ensure his understanding of the rights he was waiving. Centers v. Commonwealth, Ky. App., 799 S.W.2d 51 (1990).

Finally, Spiller contends that the trial court erred in denying his RCr 11.42 motion without an evidentiary hearing. The trial court is not required to hold a hearing when the record clearly refutes the allegations in a petition to vacate a sentence pursuant to RCr 11.42. Fraser v. Commonwealth, Ky., 59 S.W.3d 448 (2001). Spiller's allegation that his counsel did not pursue a defense to the charges against him is refuted by the numerous pretrial motions in the record. Moreover, he has presented no evidence that would overcome the higher burden placed on a defendant who unconditionally pleads guilty and subsequently challenges his conviction. In addition, the record reflects the lengthy process by which the trial court accepted Spiller's plea as knowing, intelligent and voluntary. Consequently, the trial court was under no obligation to hold an evidentiary hearing prior to denying Spiller's motion for post-conviction relief.

For the forgoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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