RENDERED: MARCH 21, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002768-MR

BRADLEY K. YOUNG — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOPF, JUDGE
ACTION NO. 97-CR-002478

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION

AFFIRMING

** ** ** ** **

BEFORE: BAKER, GUIDUGLI AND SCHRODER, JUDGES.

BAKER, JUDGE: Bradley K. Young brings this *pro se* appeal from a December 6, 2001, order of the Jefferson Circuit Court. We affirm.

The facts are these: On October 13, 1997, a Jefferson County grand jury indicted Young for attempt to commit rape in the first degree, second degree Burglary, first degree Stalking, Violation of a Protective Order, second degree Stalking, and for being a second degree Persistent Felony Offender (PFO II). On August 13, 1998, Young entered an Alford v. North Carolina, 379

U.S. 952, 85 S. Ct. 610, 13 L. Ed. 2d 550 (1965) plea of guilty to the charges of first degree Sexual Abuse, Criminal Trespass, first degree Stalking, Violation of a Protective Order, and PFO II. The charge of second degree Stalking was dismissed as merged. On September 25, 1998, the circuit court sentenced Young to a total of ten years imprisonment. Young's sentence was probated for a period of five years.

In April 1999, the Commonwealth filed a motion to revoke Young's probation, and the trial court conducted a revocation hearing on May 13, 1999. The circuit court ordered as a further condition of probation, appellant was to serve six months in jail with work release and sex abuse counseling release. On February 7, 2000, the Commonwealth filed a subsequent motion to revoke probation. After a hearing on March 8, 2000, the Court revoked Young's probation and ordered him to serve his term of imprisonment, giving him credit for time served.

On December 11, 2000, Young filed a motion pursuant to Ky. R. Civ. P. (CR) 60.02(a), (c), and (f), to void his sentence. This motion was denied. On September 20, 2001, Young filed a motion to vacate, set aside, or correct sentence pursuant to Ky. R. Crim. P. (RCr) 11.42. The circuit court summarily denied his motion, without appointment of counsel. This appeals follows.

Young asserts that his trial counsel was ineffective because counsel advised him to plead guilty when some evidence existed that may have exonerated him from all charges. The evidence referred to is a taped conversation between Young's

trial counsel and the victim of Young's crime, Dana Carlton. Young admits in his RCr 11.42 motion that he knew of Carlton's confession before pleading guilty, but he asserts that his counsel discounted the testimony and told him that it "could not be utilized at trial."

To demonstrate ineffective assistance of counsel, Young must show (1) that his counsel's performance was deficient, and (2) that the deficient performance was prejudicial. Taylor v. Commonwealth, Ky. App., 724 S.W.2d 223 (1986), citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). In order to show prejudice in the context of a guilty plea, Young must demonstrate there is a reasonable probability that, but for his counsel's unprofessional errors, he would not have pled guilty and that he would have insisted on going to trial. Phon v. Commonwealth, Ky., 51 S.W.3d 456, 459-60 (2001). Even if Young's counsel was deficient, we are of the opinion that Young fails to demonstrate prejudice.

Before the Commonwealth offered Young a plea agreement, he faced a possibility of twenty years in prison if the charge of first degree Criminal Attempt had been enhanced by the PFO II charge. Carlton's testimony in Young's favor was vague, at best, and could very likely be viewed with suspicion by a jury - since Carlton is the mother of Young's children. Most importantly, the record indicates that Young, even though he knew of Carlton's testimony, accepted the Commonwealth's proffered written plea agreement and signed a statement that stated he understood the consequences thereof. Also, the circuit court subsequently found

his plea to be voluntary. It reasonably appears from the record before us that Young was quite willing to enter a plea in exchange for a probated sentence, and his complaints of his counsel's alleged ineffectiveness appear rather disingenuous in that they were not raised until long after his probation was revoked for noncompliance. In short, we are of the opinion that Young fails to demonstrate that there is a reasonable probability that, but for his counsel's unprofessional errors, he would have pled not guilty and that he would have insisted on going to trial. Id.

For the foregoing reasons, the order of the circuit court is affirmed.

ALL CONCUR.

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