

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001200-MR

ERIC ADRIAN HARMON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOFF, JUDGE
ACTION NO. 98-CR-001481

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING AND REMANDING
** **

BEFORE: EMBERTON, Chief Judge; BARBER and COMBS, Judges.

COMBS, JUDGE: Eric Adrian Harmon appeals from a Jefferson Circuit Court order that denied his motion, filed pursuant to RCr¹ 11.42, in which he alleged that his guilty plea was not voluntarily entered and that he was denied the effective assistance of counsel. After reviewing these allegations in light of the record of the case, we vacate and remand for an evidentiary hearing.

¹Kentucky Rules of Criminal Procedure.

In June 1998, Harmon was indicted on the charge of trafficking in a controlled substance, a Class C felony. The indictment charged that on April 14, 1998, Harmon sold \$220.00 worth of powder cocaine to a plain clothes police officer. His case was set for trial on December 2, 1998.

On the morning of trial, Harmon accepted the Commonwealth's offer of a plea bargain. He agreed to plead guilty in exchange for the Commonwealth's recommended sentence of five years to serve or seven years if probated. The Commonwealth agreed to take no position with respect to probation. The trial court accepted Harmon's guilty plea and, on March 4, 1999, sentenced him to serve seven-years' imprisonment. The sentence was withheld, however, and Harmon was placed on supervised probation for five years.

In September 1999, Harmon stipulated that he had violated the conditions of his probation. In an order entered December 1, 1999, the trial court revoked Harmon's probation and sentenced him to seven-years' imprisonment.

On February 27, 2002, Harmon filed a motion pursuant to RCr 11.42 to vacate and set aside his conviction. He complained that his trial attorney had "never interviewed [him] in his office or in any private setting, rather all discussions concerning the case were held at the courthouse on the day when the case was set for some proceeding. . . ." He contended that his attorney had spent only a few minutes advising him before the case was called. Harmon alleged that his trial attorney failed

entirely to inform him of all the possible defenses that were available to him in this case and of the applicable lesser-included offenses. He claimed that his trial attorney coerced him to plead guilty to the charged offense and that the plea was not entered knowingly, voluntarily, or intelligently.

The trial court did not hold an evidentiary hearing concerning Harmon's RCr 11.42 motion. Based upon the written record, the court summarily denied the motion to vacate. This appeal followed.

Harmon contends that the trial court erred by failing to hold an evidentiary hearing, by failing to conclude that he had been denied the effective assistance of counsel, and by failing to hold that his guilty plea was not knowingly, voluntarily, and intelligently entered. We agree that this case merited an evidentiary hearing.

The Kentucky Supreme Court has recently reiterated that "the voluntariness of a guilty plea can be determined only by considering all of the relevant circumstances surrounding it." Rodriguez v. Commonwealth, Ky., 87 S.W.3d 8, 10(2002), (Citing Brady v. United States, 397 U.S. 742, 749, 90 S.Ct. 1463, 1469, 25 L.Ed.2d 747 (1970) (citing Haynes v. Washington, 373 U.S. 503, 513, 83 S.Ct. 1336, 1343, 10 L.Ed.2d 513 (1963))). Generally, a proper evaluation of the circumstances supporting or refuting claims of coercion and ineffective assistance of counsel requires an inquiry into what transpired between attorney and client that led to the entry of the plea; *i.e.*, an evidentiary hearing. Id.

The record in this case does not clearly demonstrate that Harmon's guilty plea was voluntary, knowing, and intelligent. Therefore, we agree that the trial court was required to conduct a full evidentiary hearing.

Accordingly, the order of the Jefferson Circuit Court is vacated, and this case is remanded with directions that the court hold an evidentiary hearing on Harmon's motion in order to make a determination based on the "totality of the circumstances" as to whether his guilty plea was entered knowingly, voluntarily, and intelligently.

ALL CONCUR.

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