

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-001907-MR

AARON RUFFIN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LAURANCE B. VANMETER, JUDGE  
ACTION NO. 99-CR-01060

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, COMBS, and TACKETT, Judges.

BUCKINGHAM, JUDGE: Aaron Ruffin appeals from an order of the Fayette Circuit Court denying his motion pursuant to RCr<sup>1</sup> 11.42 to vacate his conviction and sentence. We affirm.

A Fayette Circuit Court grand jury indicted Ruffin on charges of first-degree assault, two counts of first-degree robbery, third-degree assault, first-degree attempted escape, and terroristic threatening. Pursuant to a plea agreement with the Commonwealth, Ruffin pled guilty to first-degree assault,

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<sup>1</sup> Kentucky Rules of Criminal Procedure.

one count of first-degree robbery, and third-degree assault. The Commonwealth recommended a fifteen-year sentence on the first-degree assault charge, a ten-year sentence on the first-degree robbery charge, and a five-year sentence on the third-degree assault charge. The agreement did not state whether the sentences would run concurrently or consecutively.

At the guilty plea proceeding, Ruffin advised the trial court that he understood the three sentences could be run consecutively for a total sentence of thirty years. Further, Ruffin's counsel told the court that Ruffin was pleading guilty under a complicity theory, and Ruffin stated that he was the look-out for the robbery committed by another individual. The Commonwealth advised the court that Ruffin had also related that he was armed and standing outside the door when the robbery took place. At the sentencing hearing the court ran the sentences consecutively for a total sentence of thirty years.

On December 20, 2001, Ruffin filed a motion to vacate his conviction and sentence pursuant to RCr 11.42. Therein, he alleged that he had received ineffective assistance of counsel and that there was prosecutorial misconduct at the guilty plea proceeding. The circuit court entered an order denying the motion without an evidentiary hearing. This appeal by Ruffin followed.

Ruffin's first argument is that he received ineffective assistance of counsel due to counsel advising him to plead guilty to both the first-degree robbery and the first-degree assault charges. He claims that both charges arose out of the same course of conduct and that the conviction of both charges violated his double jeopardy rights.

Ruffin's counsel filed a motion to compel the Commonwealth to elect between the robbery and the assault charges in its prosecution of the case. The court denied the motion. Ruffin contends that his counsel rendered ineffective assistance in failing to cite the case of O'Hara v. Commonwealth, Ky., 781 S.W.2d 514 (1989), a case in which an assault conviction was reversed on the ground that it had merged into the robbery conviction. Id. at 516. Ruffin claims that this case was directly on point and that, had it been cited to the court, it would have resulted in the dismissal of the assault charge.

The circuit court rejected Ruffin's argument on the ground that the O'Hara case was not applicable to these facts. More specifically, the court ruled that the case of Taylor v. Commonwealth, Ky., 995 S.W.2d 355 (1999), was on point. We agree. In that case convictions for both robbery and assault were affirmed on appeal, and the merger argument was rejected. Id. at 363. The O'Hara case was specifically distinguished from

the facts therein. Id. at 359. The facts in the Taylor case are identical to the facts in the case *sub judice*, and we reject Ruffin's argument that counsel rendered ineffective assistance in this regard.

Ruffin also argues that his counsel rendered ineffective assistance in connection with the O'Hara case by failing to advise him that he could enter a conditional guilty plea pursuant to RCr 8.09 so as to challenge the court's ruling regarding the merger of the robbery and assault charges. Since the O'Hara case had no applicability, this argument is likewise without merit.

Ruffin's second argument is that he received ineffective assistance of counsel due to counsel's failure to fully advise him in regard to the entry of his guilty pleas. Specifically, he asserts that he was not adequately informed that he could receive consecutive sentences. Because the record of the guilty plea proceeding shows that the court explicitly informed Ruffin of the possibility that his sentences could run consecutively for a total of thirty years, and because Ruffin indicated that he understood that the court could so sentence him, it is clear that the record indicates otherwise. Further, the record is clear that Ruffin's plea was entered knowingly, freely, voluntarily, and intelligently.

Ruffin's third argument is that he received ineffective assistance of counsel due to counsel's failure to move the court to suppress his confession. He states that an investigation by counsel would have revealed that he confessed prior to being advised of his Miranda rights. He notes that "the record does not specifically, disclose whether Appellant had been read his rights and waived them in this case." He also notes that "the record is silent as to waiver." We reject his argument because there is no indication that Ruffin was not advised of his rights prior to confessing.

Ruffin's fourth argument is that he received ineffective assistance of counsel due to counsel's failing to object to the prosecutor's actions and alleged misconduct during the guilty plea proceeding. He asserts that "the Commonwealth made the plea not the Appellant." In other words, he contends that the Commonwealth stated its version of the facts of the case and thereby improperly entered the guilty plea for him. Because Ruffin admitted to the court that he served as a look-out while his accomplice committed the robbery, that he knew his accomplice was armed with a gun, and that he himself was armed with a gun and was standing outside the door, his argument that his counsel rendered ineffective assistance in this regard is clearly without merit.

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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