

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000397-MR

MARK BROWN/MADDEN

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE GEOFFREY P. MORRIS, JUDGE  
INDICTMENT NOS. 00-CR-001665 & 01-CR-000381

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

DYCHE, JUDGE: On July 24, 2000, the cashier of the Family Dollar Store on Breckenridge Lane in Louisville, Kentucky, was robbed at gunpoint. Approximately \$750 was taken from the safe. The cashier was able to obtain the license plate number from the getaway car. Mark Brown/Madden was pulled over later that evening. He and his companion were positively identified, and \$697 was recovered from the vehicle and on their persons. Brown/Madden confessed to being the perpetrator.

The following week an indictment was returned versus Brown/Madden for Robbery in the First Degree; in February 2001 a second indictment for First Degree Persistent Felony Offender (PFO) was returned. Brown/Madden unsuccessfully sought to suppress his confession and the fruits of the search of his vehicle. He entered conditional pleas of guilty to Robbery I and the amended charge of PFO II on April 24, 2001; he received a sentence of twenty years enhanced to thirty-five years.

The Kentucky Supreme Court affirmed Brown/Madden's conviction on September 12, 2002. He filed his motion for RCr 11.42 relief on December 23 of that same year. The Jefferson Circuit Court denied the requested relief and Brown/Madden's later motion for findings of fact and conclusions of law. He appeals.

Appellant's first two arguments are that the trial court erred in failing to hold an evidentiary hearing and erred in denying Brown/Madden's motion for appointment of counsel. We disagree with both contentions. Contrary to Brown/Madden's assertions, "[a]n evidentiary hearing is not necessary to consider issues already refuted by the record in the trial court. Conclusionary allegations which are not supported with specific facts do not justify an evidentiary hearing because RCr 11.42[(5)] does not require a hearing to serve the function of discovery. Our review of the record indicates that it

conclusively disposes of the allegations." Hodge v. Commonwealth, 116 S.W.3d 463 (Ky. 2003), cert. denied, 541 U.S. 911 (2004). "If an evidentiary hearing is not required, counsel need not be appointed, 'because appointed counsel would [be] confined to the record.'" Fraser v. Commonwealth, 59 S.W.3d 448, 453 (Ky. 2001)(citation omitted).

Appellant thirdly maintains that he received ineffective assistance of counsel. His specific allegations include inadequate communication, failure to investigate, failure to file pretrial motions, and failure to effectively move to withdraw appellant's guilty plea. Again, these contentions were refuted of record, and the trial court correctly found that Brown/Madden did not meet his burden. See Hill v. Lockhart, 474 U.S. 52 (1985); accord Sparks v. Commonwealth, 721 S.W.2d 726 (Ky.App. 1986).

Brown/Madden's fourth issue is whether the trial court erred in denying his motion to withdraw his guilty plea. He insists that counsel promised him a fifteen year sentence but that he instead received thirty-five years' imprisonment. Not only does the record belie this claim, but also the Supreme Court, in affirming appellant's conviction, found there to be overwhelming evidence of guilt. That Court further stated that "[t]he trial court conducted a lengthy discussion with Appellant to determine that Appellant was intelligently, knowingly, and

voluntarily entering his guilty plea." See Boykin v. Alabama, 395 U.S. 238 (1965); and Kotas v. Commonwealth, 565 S.W.2d 445 (Ky. 1978). Our Supreme Court went on to find that Brown/Madden's guilty plea was valid. We agree.

We also agree with the Commonwealth that, "[i]n view of the fact that the individual allegations of ineffective assistance of counsel are unconvincing, they can have no cumulative effect." Sanborn v. Commonwealth, 975 S.W.2d 905, 913 (Ky. 1998)(citations omitted).

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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