

RENDERED: MARCH 9, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001624-MR
&
NO. 2005-CA-000101-MR

WILLIAM A. SHECKLES, JR.

APPELLANT

v. APPEALS FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH MCDONALD-BURKMAN, JUDGE
ACTION NO. 00-CR-001890

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, JUDGE; EMBERTON AND PAISLEY, SENIOR JUDGES.¹

PAISLEY, SENIOR JUDGE: William A. Sheckles, Jr. was charged with assault in the first degree and persistent felony offender in the second degree. Pursuant to a plea agreement, he pleaded guilty to the amended charges of assault in the second degree and persistent felony offender in the second degree. He appeals from the circuit court's summary denial of his two post-conviction motions; the first, was a CR 60.02 in which he claimed that the prior conviction used to enhance his sentence was invalid and the second

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

was an RCr 11.42 motion in which he claimed that he received ineffective assistance of counsel.² We affirm both orders.

In his CR 60.02 motion, Sheckles alleged that his constitutional rights were violated as a result of his conviction as a persistent felony offender and that the court erred when it refused him the opportunity to contest the validity of his prior conviction used to enhance his sentence. It is well-established that an attack on the validity of a prior conviction used to enhance a subsequent sentence is not proper pursuant to CR 60.02. Any issue regarding the validity of Sheckles's prior conviction must have been raised at the time he was tried as a persistent felony offender.

In situations such as this, where a defendant has been convicted of one or more felonies and is subsequently tried and convicted as a persistent felon based on the earlier convictions, this jurisdiction requires him to raise any issues about the validity of those earlier convictions at the time he is tried as persistent felon. If he does not, he is precluded from contesting the validity of the earlier convictions in subsequent post-conviction proceedings. *Alvey v. Commonwealth*, 648 S.W.2d 858, 859 Ky. 1983) (citation omitted).

Sheckles's attempt to utilize the extraordinary relief afforded by CR 60.02 as a means to challenge his prior conviction was properly denied by the circuit court.

Prior to the entry of his guilty plea, Sheckles filed a *pro se* motion to dismiss the persistent felony offender charge; it was not ruled upon, however, until after he entered his guilty plea. He now contends that relief should be afforded pursuant to CR

² Prior to sentencing, Sheckles made a motion to withdraw his guilty plea which was denied. He appealed and in an unpublished opinion, *Sheckles v. Commonwealth*, 2002-CA-001977, this court held that the circuit court did not err in refusing to permit Sheckles to withdraw his voluntary plea.

60.02 because he was denied the “opportunity to challenge” the persistent felony offender charge.

An often cited rule in criminal cases is that a guilty plea waives all defenses other than that the indictment did not charge an offense. *Thompson v Commonwealth*, 147 S.W.3d 22, 39 (Ky. 2004). Thus, a voluntary unconditional guilty plea precludes the defendant from subsequently asserting a defense to the charge. As stated in *Thompson*, “a guilty plea constitutes a break in the chain of events, and the defendant therefore may not raise independent claims related to the deprivation of constitutional rights occurring before the entry of the guilty plea.” *Id.* Any constitutional right that Sheckles could possibly claim was denied by the circuit’s court failure to timely rule on his motion cannot be raised following the entry of his guilty plea.

In his RCr 11.42 motion, Sheckles alleged that there was a conflict of interest between himself and his attorney based upon counsel’s statement in a motion to withdraw that “irreconcilable differences” had arisen between the parties both as to compensation and as to the practice of the case. He further alleged that: (1) counsel failed to adequately investigate the facts and interview witnesses and misadvised him concerning the applicable law, including the possibility of probation; (2) counsel permitted him to enter the plea while under the influence of a mind-altering medication; and (3) counsel’s failure to challenge the validity of his prior conviction resulted in his entry of an involuntary plea.

The standard of review applicable to ineffective assistance of counsel claims is summarized in *Bronk v. Commonwealth*, 58 S.W.3d 482, 486-487 (Ky. 2001):

A showing that counsel's assistance was ineffective in enabling a defendant to intelligently weigh his legal alternatives in deciding whether to plead guilty has two components: (1) that counsel made errors so serious that counsel's performance fell outside the wide range of professionally competent assistance; and (2) that the deficient performance so seriously affected the outcome of the plea process that, but for the errors of counsel, there is a reasonable probability that the defendant would not have pleaded guilty, but would have insisted on going to trial.

A hearing on an RCr 11.42 motion is not necessary if the record on its face refutes the movant's allegations. *Hopewell v. Commonwealth*, 687 S.W.2d 154 (Ky.App. 1985). Moreover, where the motion is based on nothing more than conclusory allegations unsupported by specific facts, the court is not required to hold an evidentiary hearing. *Hodge v. Commonwealth*, 116 S.W.3d 463 (Ky. 2003).

Sheckles makes many allegations but states few facts to support the relief requested. Although counsel successfully moved to withdraw from the case, he was subsequently re-hired as counsel. While there may have been a disagreement between Sheckles and counsel as to compensation and the presentation of a defense, there is nothing in the record which indicates that counsel had an actual conflict of interest which compromised the representation of his client. *See Kirkland v. Commonwealth*, 53 S.W.3d 71 (Ky. 2001).

Sheckles contends that counsel did not inform him that, under KRS 532.080, he was not eligible for probation and that had he known the true consequences of his plea, he would not have pleaded guilty. The circuit court correctly noted that the Commonwealth did not promise a recommendation for probation. Additionally, the plea

agreement made no reference to probation. The failure to inform a defendant of all the consequences of his plea and all possible alternative courses of action does not render an otherwise voluntary plea an involuntary one. *Turner v. Commonwealth*, 647 S.W.2d 500 (Ky.App. 1982).

At the time Sheckles entered his plea, he was taking certain prescribed medication which, he now contends, rendered him incompetent to enter a voluntary plea. To be valid, a plea must be knowingly, intelligently, and voluntarily entered. *Bronk*, supra. The record reveals that a competency evaluation found Sheckles competent to stand trial. At the time of his plea, Sheckles was questioned concerning the medications he was taking and told the court that he took them only in the evenings. He acknowledged that he fully understood that he was pleading guilty and the consequences of his plea. The record clearly refutes Sheckles allegation that he was mentally incompetent.

Sheckles persists in his contention that his prior conviction used to enhance his sentence was unconstitutional but fails to reveal the basis for his contention and did not attach a copy of that conviction to his motion. He admitted to the circuit court that he had been convicted of two counts of wanton endangerment and there was no indication that his conviction was unconstitutional. We find no basis for Sheckles's claim that counsel should have challenged the validity of the prior conviction or that such a challenge would have been successful.

The remaining allegations raised concerning counsel's effectiveness are equally without merit and are nothing more than self-serving conclusions unsupported by

specific facts. We hold, therefore, that the circuit court properly summarily denied the RCr 11.42 motion.

The orders of the Jefferson Circuit Court are affirmed.

ALL CONCUR.

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