

Commonwealth of Kentucky
Court of Appeals

NO. 2003-CA-002224-MR

DONNIE D. BENNETT

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
v. ACTION NO. 99-CR-002147

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, Chief Judge; BUCKINGHAM and TACKETT, Judges.

COMBS, CHIEF JUDGE: The sole issue in this appeal is whether the trial judge erred in denying appellant's motion for relief (filed pursuant to RCr¹ 11.42) without appointing counsel or conducting an evidentiary hearing. We agree that the trial judge correctly determined that the allegations set forth in the motion had been waived by the entry of an unconditional plea of

¹ Kentucky Rules of Criminal Procedure.

guilt to the underlying charges. Therefore, we affirm the denial of relief in this case.

Appellant, Donnie Bennett, was charged by information with the offenses of first-degree trafficking in a controlled substance, possession of a handgun by a convicted felon, and possession of drug paraphernalia. In exchange for the Commonwealth's agreement to recommend lenient sentencing and to forego lodging a persistent felony offender charge, Bennett signed the appropriate forms for entry of an unconditional guilty plea. He subsequently appeared before Judge Geoffrey Morris of the Jefferson Circuit Court, who conducted a notably thorough and probing colloquy in order to insure that Bennett's decision to enter a guilty plea was knowing, intelligent, and voluntary.

In the course of that interchange, Bennett acknowledged: his satisfaction with the assistance rendered by his retained counsel; his understanding of the nature of the charges against him; the rights that he would waive by pleading guilty; and the fact that he was indeed guilty of the crimes charged. The trial judge then accepted the plea as being the product of a voluntary decision and set a date for sentencing.

Although appellant failed to appear on the original sentencing date, he was ultimately sentenced in accordance with the Commonwealth's recommendation of imprisonment of ten (10)

years on the trafficking charge, five (5) years on the possession of a firearm charge, and twelve (12) months on the possession of drug paraphernalia charge. These sentences were ordered to run concurrently with each other but consecutively as to a separate action pending in a different division of Jefferson Circuit Court.

Approximately one year after sentencing, Bennett sought to vacate the judgment based upon his guilty plea. He alleged that he had been deprived of his Sixth Amendment right to effective assistance of counsel due to his attorney's failure to seek suppression of the evidence against him. His allegation was predicated on contentions that the evidence supporting the charges against him had been unlawfully seized and that reasonably competent counsel would have moved to suppress it. As the trial judge correctly determined, Bennett waived his right to contest the evidence when he elected to enter an unconditional plea of guilty.

Although he argues now before this Court that he was coerced into pleading guilty due to the deficient performance of his trial counsel, that contention was not set forth in the RCr 11.42 motion filed in circuit court. However, even if that contention had been properly alleged and preserved by presentation to the circuit court, a review of Bennett's responses during his plea colloquy wholly dispels any question

as to the knowing and voluntary nature of his plea. He clearly sought to minimize the possible sentences and to avoid having a persistent felon charge filed against him by virtue of his plea negotiations. The record in this case is clear that aided by the advice of able and experienced counsel, Bennett weighed the available options and elected to accept the benefit of a very beneficial bargain.

In *Bronk v. Commonwealth, Ky.*, 58 S.W.3d 482, 486-87 (2001), the Supreme Court of Kentucky again analyzed and repeated the process to be utilized in evaluating a claim that a guilty plea had been rendered involuntary due to ineffective assistance of trial counsel:

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.

Evaluating the totality of the circumstances surrounding the guilty plea is an inherently factual inquiry which requires consideration of "the accused's demeanor, background and experience and whether the record reveals that the plea was voluntarily made."
[Footnotes omitted.]

Applying these factors to the circumstances surrounding Bennett's pleas, we are convinced that the record clearly demonstrates that Bennett understood his rights and that he was satisfied with his counsel at the time he entered his plea. As in *Bronk*, appellant was an adult who appeared to be articulate and to have an above-average comprehension of the proceedings. He was given ample opportunity by the trial judge to retract his plea or to express dissatisfaction with his counsel. We are satisfied that Bennett's guilty plea was knowing, intelligent, and voluntary. Therefore, it operated to waive all defenses other than that the indictment charged no offense. *Corbett v. Commonwealth, Ky.*, 717 S.W.2d 831 (1986).

Finally, because the matters alleged in Bennett's RCr 11.42 motion are conclusively refuted by the record, he was not entitled to appointment of counsel or an evidentiary hearing. *Frazer v. Commonwealth, Ky.*, 59 S.W.3d 448 (2001). Bennett has failed to establish any error on the part of the trial judge in denying his RCr 11.42 motion.

Therefore, we affirm the denial of relief in this case.

ALL CONCUR.

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