

RENDERED: FEBRUARY 11, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-000388-MR

CHARLES J. PERKINS, SR.

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE TOM MCDONALD, JUDGE  
ACTION NO. 96-CR-000734

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AFFIRMING

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BEFORE: SCHRODER, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Charles J. Perkins, Sr., brings this appeal from a December 31, 2003, order of the Jefferson Circuit Court denying his motion to vacate guilty plea and judgment brought under Ky. R. Crim. P. (RCr) 11.42. We affirm.

In March 1996, Perkins was indicted by the Jefferson County Grand Jury upon two counts of first-degree robbery, two counts of first-degree kidnapping, one count of first-degree sodomy, one count of criminal attempt to kidnap, one count of first-degree wanton endangerment and one count of falsely

reporting an incident. The indictment was from two separate incidents that occurred in Jefferson County in December 1995 and March 1996.

In December 1995, Perkins allegedly entered a vehicle parked at a Wal-Mart parking lot with two women inside. Perkins kidnapped the two women at knife-point and drove the women in their vehicle to another location. He ordered one of the women to blindfold the other woman and place the blindfolded woman in the trunk of the vehicle. He then forced the remaining woman to perform oral sex upon him. Thereafter, he drove the women back to the Wal-Mart parking lot where he dropped off one woman behind the store and left the other woman in the trunk of her vehicle.

The second incident occurred in March 1996, when Perkins attempted to kidnap a woman at knife-point in a grocery store parking lot. However, a nearby witness thwarted the attempted kidnapping, and Perkins drove his vehicle to another location and abandoned it. He then took a cab to a bar and called the police to falsely report his vehicle as being stolen.

In accordance with a plea agreement reached with the Commonwealth, Perkins pled guilty to the charges stemming from the March 1996 incident and entered a guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d (1970) with respect to the charges stemming from the December

1995 incident. On December 27, 1997, Perkins was sentenced to a total of twenty-five years' imprisonment.

Thereafter, on May 9, 1999, Perkins filed a *pro se* RCr 11.42 motion to vacate that portion of the judgment relating to the December 1995 incident. The circuit court appointed counsel to represent Perkins, and conducted an evidentiary hearing upon the motion. On December 31, 2003, the circuit court entered an opinion and order denying Perkins's RCr 11.42 motion, thus precipitating this appeal.<sup>1</sup>

Perkins contends the circuit court committed reversible error by denying his RCr 11.42 motion to vacate his sentence. Specifically, Perkins argues that he would not have entered an Alford plea of guilty to the charges stemming from the December 1996 incident (first-degree sodomy, two counts of first-degree robbery, and two counts of kidnapping) but for trial counsel's ineffective assistance. We disagree.

When challenging a guilty plea based upon ineffective assistance of counsel, Perkins must demonstrate that counsel's performance was deficient and that such deficiency so seriously affected the outcome of the plea process that but for counsel's errors there is a reasonable probability that Perkins would not

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<sup>1</sup> It must be pointed out that the Department of Public Advocacy filed a motion with this Court to withdraw as counsel for Perkins as the appeal was not "a proceeding that a reasonable person with adequate means would be willing to bring at his own expense." The motion was granted by this Court on May 28, 2004, and Perkins proceeds *pro se*.

have pled guilty but would have insisted upon going to trial. Sparks v. Commonwealth, 721 S.W.2d 726 (Ky.App. 1986).

In this case, Perkins alleges that trial counsel's performance was deficient because counsel failed to inform Perkins that there existed: (1) "a wide discrepancy in the descriptions that the victims gave of their attackers" and (2) "there was no scientific evidence which linked Appellant to the offenses he was accused of committing." We again disagree.

The record reflects that one of the victims positively identified Perkins as her assailant; each victim described the assailant as a white male in his late-thirties to mid-forties with facial hair wearing a black leather jacket and carrying a fishing or hunting knife. The discrepancy in the descriptions of the assailant centered upon his height and weight. However, Perkins admitted during the RCr 11.42 evidentiary hearing that trial counsel had advised him of a "small discrepancy in the descriptions." Also, the assailant was identified as driving a royal blue pickup that matched the vehicle used and falsely reported stolen by Perkins in March 1996. Further, Perkins had no alibi for his whereabouts when the December 1995 incident took place.

Based upon the above evidence amassed against the Perkins, we are of the opinion that even if trial counsel had been deficient in failing to inform Perkins of the lack of

"scientific evidence" and the "discrepancy in the descriptions," there does not exist a reasonable probability that Perkins would not have pled guilty. See id. Simply stated, there exists a reasonable probability that Perkins would have been convicted of the offenses charged and would have received an increased sentence. The plea agreement was clearly based on a reasoned evaluation of the evidence against Perkins, the likelihood of conviction and the probability of receiving a sentence in excess of that negotiated in the plea. Accordingly, we are of the opinion the circuit court did not err by denying Perkins's RCr 11.42 motion.

For the foregoing reasons, the opinion and order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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