

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000517-MR

JOSEPH DON GROVES

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 01-CR-00007

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Joseph Don Groves brings this *pro se* appeal from a February 24, 2004, order of the Muhlenberg Circuit Court denying his Ky. R. Crim P. (RCr) 11.42 motion to vacate his sentence of fourteen years' imprisonment. We affirm.

In January 2001, the Muhlenberg County Grand Jury indicted Groves upon manufacturing methamphetamine, possession of anhydrous ammonia in unapproved container with intent to manufacture methamphetamine, possession of a handgun by a convicted felon, possession of drug paraphernalia, and with

being a persistent felony offender in the first degree. Ultimately, Groves accepted a plea agreement from the Commonwealth and entered a plea of guilty to manufacturing methamphetamine, possession of anhydrous ammonia in unapproved container with intent to manufacture methamphetamine, possession of a handgun by a convicted felon, and possession of drug paraphernalia. In exchange, the Commonwealth recommended a total term of fourteen years' imprisonment to run concurrently with two previous indictments against Groves in 2000-CR-00167 and 2000-CR-00190.

In February 2004, Groves filed a RCr 11.42 motion to vacate sentence alleging that his guilty plea was involuntary because of ineffective assistance of trial counsel. The circuit court denied Groves' RCr 11.42 motion without an evidentiary hearing and without appointment of counsel. This appeal follows.

Groves contends the circuit court committed reversible error by denying his RCr 11.42 motion without an evidentiary hearing and without appointment of counsel. Groves raises five arguments on appeal. In three of those arguments, he contends that his guilty plea was involuntary because trial counsel erroneously advised him to plead guilty to the offenses of possession of handgun by convicted felon, possession of anhydrous in unapproved container, and with manufacturing

methamphetamine. Groves contends there was insufficient evidence to support convictions upon these offenses. It is well-established that a claim of insufficiency of evidence is not a basis for relief under RCr 11.42. King v. Commonwealth, 408 S.W.2d 622 (Ky. 1966). Accordingly, we view these allegations to be without merit.

Groves also argues that his guilty plea was not knowingly entered because trial counsel was ineffective for failing to conduct discovery. To prevail upon such a claim, Groves must demonstrate that trial counsel's performance was deficient and except for such deficiency, he would not have pled guilty but would have insisted upon going to trial. Kiser v. Commonwealth, 829 S.W.2d 432 (Ky.App. 1992).

Here, Groves makes bare assertions that trial counsel's discovery was somehow deficient. However, he fails to specifically state the items of exculpatory evidence that trial counsel failed to discover and how such discovered evidence would have changed the outcome of the plea process. Upon the whole, Groves' argument consists of mere conclusory statements and does not create a material issue of fact. Id. Accordingly, we reject his contention that trial counsel was ineffective for failing to conduct discovery.

Groves' final contention of error looks to the cumulative effect of trial counsel's ineffective assistance.

Having determined that trial counsel's assistance was not ineffective, this allegation is without merit.

For the foregoing reasons, the order of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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