

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001113-MR

TERRY S. BISHOP

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
ACTION NO. 01-CR-001487

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BARBER, JUDGE: Appellant, Terry S. Bishop (Bishop), appeals pro se the Jefferson Circuit Court's denial of his motion pursuant to RCr 11.42, asserting ineffective assistance of counsel.

Bishop also contends that the trial court erroneously denied his request for appointment of counsel to represent him and his request for an evidentiary hearing. We affirm the Jefferson Circuit Court.

Bishop argues that counsel failed to properly investigate the action prior to trial. He claims that there was no evidence to support the charges against him, and that defense counsel improperly coerced him into pleading guilty to the charges. The trial court denied his motion for an evidentiary hearing and for appointment of counsel. The trial court also denied Bishop's claim that the plea should be reversed due to ineffective assistance of counsel.

Bishop was under a domestic violence order at the time the charged offenses occurred. Despite the court order, he attacked the victim and cut her throat with a knife. He also broke her jaw in two places. Bishop was charged with criminal attempt to commit murder, assault in the second degree, and violation of a protective order. Bishop pled guilty to the charges and was given a concurrent sentence of twelve years. The plea of guilty states that Bishop was not eligible for probation because he committed the offense while on probation for a separate wrongdoing. The plea also states that Bishop does not qualify as a violent offender because the injuries inflicted did not create a serious risk of death to the victim. Due to the agreement that Bishop would not be charged as a violent offender, Bishop was not automatically required to serve 85% of the sentence imposed.

Bishop asserts that the court should have granted his request for an evidentiary hearing. No hearing is necessary unless "the answer raises a material issue of fact that cannot be determined on the face of the record." Stanford v. Commonwealth, 854 S.W.2d 742, 743 (Ky. 1993). On review of Bishop's RCr 11.42 motion, the court found that it was not necessary to hold an evidentiary hearing.

Bishop claims that he was entitled to appointment of counsel. The trial court stated that the issues before it were adequately addressed in the parties' pleadings, and that it would be a futility to appoint counsel. Commonwealth v. Stamps, 672 S.W.2d 336 (Ky. 1984). The issues raised were clearly addressed in the pleadings contained in the record. No error in this ruling has been shown.

Bishop contends that the evidence below was insufficient to prove that he had a weapon or knife, and that the plea should be reversed on that ground. Sufficiency of the evidence is not a proper ground for an RCr 11.42 motion. Boles v. Commonwealth, 406 S.W.2d 853, 855 (Ky. 1966). A plea of guilty is an admission of the allegations detailed in the indictment. Boles v. Commonwealth, supra at 855. On review of the record it should be noted that the witness stated that Bishop cut her throat, and that medical records supported that contention. The record contains the witness' statement and

numerous photographs of the witness' injuries. A plea of guilty waives all claims on appeal other than the assertion that the indictment charged no offense. Quarles v. Commonwealth, 456 S.W.2d 693, 694 (Ky. 1970). Bishop's plea waived the claims regarding sufficiency of evidence. For this reason, the trial court's ruling is affirmed.

A hearing on the plea was held before the trial court, and after being duly questioned and advised, Bishop agreed to the terms of the plea agreement and signed all required documentation. Signing the forms showing that the guilty plea is voluntary and knowing is proof that the plea was knowingly and voluntarily entered into. Commonwealth v. Crawford, 789 S.W.2d 779 (Ky. 1990). We see no reversible error in the court's denial of Bishop's motion.

Bishop argues that his defense counsel was ineffective due to counsel's alleged failure to recognize that the evidence did not support the charges, and due to his allegedly inducing Bishop to plead guilty. The law requires that a defendant claiming reversible error due to ineffective assistance of counsel show that counsel's actions were deficient, and that he suffered harm as a result. Taylor v. Commonwealth, 724 S.W.2d 223, 226 (Ky.App. 1986). To be successful in such a claim the defendant must show that there is a reasonable probability, but for counsel's unprofessional conduct, the results of the

proceeding would have been different. Norton v. Commonwealth, 63 S.W.3d 175 (Ky. 2001). The court must consider the totality of the circumstances surrounding the guilty plea. Kotas v. Commonwealth, 565 S.W.2d 445 (Ky. 1978).

There is a strong presumption that the actions of counsel might be considered sound trial strategy. Russell v. Commonwealth, 992 S.W.2d 871 (Ky. 1999). "It is well settled that judicial scrutiny of counsel's performance must be highly deferential." Commonwealth v. Pelfrey, 998 S.W.2d 460, 463 (Ky. 1999). Advising a defendant to plead guilty does not, in and of itself, constitute ineffective assistance of counsel. Russell v. Commonwealth, 992 S.W.2d 871, 875 (Ky.App. 1999). In this case, where Bishop was potentially facing a much greater sentence than that imposed pursuant to the plea agreement, there has been no showing that counsel's actions were unprofessional or ineffective such that the conviction should be reversed or the case should be remanded. For the foregoing reasons, the court's ruling is affirmed.

ALL CONCUR.

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