

RENDERED: DECEMBER 29, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001378-MR

GARY RANDALL GRIFFIN

APPELLANT

v. APPEAL FROM GALLATIN CIRCUIT COURT
HONORABLE ANTHONY W. FROHLICH, JUDGE
ACTION NO. 97-CR-00025

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: TAYLOR AND VANMETER, JUDGES; POTTER, SENIOR JUDGE.¹

POTTER, SENIOR JUDGE: Gary Randall Griffin was convicted of first degree sodomy and sentenced to fifty years' imprisonment. The victim was his five year-old daughter. Following his trial, Griffin obtained new counsel who appealed Griffin's case. On April 20, 2000, the Kentucky Supreme Court reversed because of the admission of unduly prejudicial evidence and evidence as to a polygraph examination. On remand, Griffin entered an Alford

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

plea to second degree sodomy and was sentenced to ten years' imprisonment. In April 2004, Griffin filed an RCr 11.42 motion alleging that on remand he received ineffective assistance of counsel because counsel failed to investigate the case and failed to file various discovery motions. The RCr 11.42 motion and his request for appointment of counsel and an evidentiary hearing were denied.

The standard for proving ineffective assistance is as follows:

The standards which measure ineffective assistance of counsel are set out in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); accord Gall v. Commonwealth, Ky., 702 S.W.2d 37 (1985); Sanborn, supra. In order to be ineffective, performance of counsel must be below the objective standard of reasonableness and so prejudicial as to deprive a defendant of a fair trial and a reasonable result. Strickland, supra. Haight v. Commonwealth, 41 S.W.3d 436, 441 (Ky. 2001).

When a guilty plea is entered and it is later alleged that counsel failed to properly investigate the case in preparation for trial and inadequately advised the defendant to enter a guilty plea, the court's inquiry is similar to when a trial has been held resulting in a conviction. The focus is on whether counsel's investigation was reasonable under the circumstances and, if not, whether if there had been a more thorough

investigation there is a reasonable probability that the defendant would have pleaded not guilty and insisted on a trial. Bronk v. Commonwealth, 58 S.W.3d 482, 486-487 (Ky. 2001).

Advising a defendant to plead guilty is not, by itself, an indication of ineffective assistance of counsel. Beecham v. Commonwealth, 657 S.W.2d 234, 237 (Ky. 1983). A reviewing court will not indulge in second-guessing counsel's advice and must look to the circumstances of the case to determine whether counsel rendered professionally competent assistance. Harper v. Commonwealth, 978 S.W.2d 311, 315 (Ky. 1998). And in order to prevail, the defendant must allege in the motion specific facts that if true, would entitle him to relief. RCr 11.42(2). With these principles in mind, we review Griffin's claim.

Griffin's vague allegation that counsel failed to investigate the case without stating any facts as to what a further investigation would have revealed is insufficient to support an RCr 11.42 motion; the trial court, therefore, properly summarily dismissed the motion. Sanders v. Commonwealth, 89 S.W.3d 380, 390 (Ky. 2002). Moreover, the record clearly refutes any allegation that counsel's representation was less than adequate. Sparks v. Commonwealth, 721 S.W.2d 726, 728 (Ky.App. 1986). Although not the original trial counsel, counsel had access to the discovery in the file

and the trial transcripts. Having successfully pursued an appeal, he was undoubtedly very familiar with the facts of Griffin's case and, on remand, made numerous pre-trial motions including a failed attempt to exclude the testimony of the child victim on the basis of her incompetence. Once it became apparent that the child would testify to the horrific acts of sexual abuse by Griffin and considering the potential sentence Griffin faced if convicted, it was certainly reasonable for counsel to recommend that he accept the plea agreement.

After review of the record and Griffin's contentions, we find that his plea was willingly, knowingly, and voluntarily entered. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

The judgment is affirmed.

ALL CONCUR.

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