

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001556-MR

BENJAMIN BENNETT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
ACTION NO. 00-CR-000209

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, JOHNSON, AND McANULTY, JUDGES.

GUIDUGLI, JUDGE: Benjamin Bennett appeals from an order of the Jefferson Circuit Court denying his motion for RCr 11.42 relief. Bennett argued that he received ineffective assistance of counsel when counsel advised him to enter an Alford plea on stalking and assault charges. For the reasons stated below, we affirm the order on appeal.

On January 26, 2000, Bennett was indicted by the Jefferson County grand jury on charges of first-degree assault, first-degree stalking, and two counts of violating a protective order. The indictment arose from an incident occurring at about

1:00 a.m. on December 12, 1999, when Bennett went to the home of his former girlfriend, Clarise Hall, and slashed the tires on her vehicle. At the time, Bennett was subject to a domestic violence order restraining him from contacting Hall and requiring him to stay at least 500 feet away from her.

While Bennett was at Hall's residence, Michael and Maurice Hobbs arrived at the house for the purpose of picking up Michael's wife. Michael and Maurice saw Bennett and apparently began yelling at him. Bennett hid from them momentarily but then lunged at Michael and cut his throat with a knife. Michael was severely injured but survived. Bennett would later maintain that he was in fear of his life because he believed that Michael or Maurice was reaching for a weapon.

On March 2, 2001, Bennett, through counsel, filed a motion to enter a guilty plea pursuant to Alford v. North Carolina. The plea was part of an agreement with the Commonwealth, the terms of which provided that Bennett would plead guilty to the assault, stalking and protective order charges in exchange for a recommended concurrent sentence of 11 years in prison. Bennett signed AOC Form 491 indicating that he understood the waiver of rights resulting from a guilty plea. On March 2, 2001, the Jefferson Circuit Court found that Bennett understood the charges against him, had an opportunity to discuss the charges with counsel, and that the plea was entered

knowingly and voluntarily. The plea was accepted and Bennett was sentenced to a total of 11 years in prison.

On December 22, 2003, Bennett filed a motion to vacate, set aside or correct the judgment pursuant to RCr 11.42. Bennett argued that he plea was not valid because he received ineffective assistance of counsel when counsel did not adequately investigate the charges and advised Bennett to accept the plea agreement. The motion was denied, and this appeal followed.

Bennett now argues that the trial court erred in denying his motion for RCr 11.42 relief. He contends that counsel failed to properly investigate the case, and should have subpoenaed Bennett's step-daughter who would have stated that Bennett was properly at Hall's home to pick up some clothing. Bennett also maintains that counsel begged and threatened him to such a degree that the plea was not voluntarily. He seeks an order reversing the denial of his motion for RCr 11.42 relief.

We have closely examined the record and the law, and find no basis for reversing the order on appeal. The standard for addressing a claim of ineffective assistance of counsel is set out in Strickland v. Washington.¹ In order to be found ineffective, counsel's performance must be below the objective

¹ 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed. 2d 674 (1984).

standard of reasonableness and must be so prejudicial as to deprive the defendant of a fair trial and a reasonable result.²

In considering ineffective assistance, the reviewing court must focus on the totality of evidence before the lower court and assess the overall performance of counsel throughout the case in order to determine whether the identified acts or omissions overcome the presumption that counsel rendered reasonable professional assistance.³

In the matter at bar, there is no basis in the record upon which Bennett may reasonably rely in overcoming the presumption that counsel rendered the professional assistance to which he was entitled. As the parties are well aware, Bennett stated in writing that he understood the charges against him; that he was fully informed as to the available defenses; and, that he understood the comprehensive waiver of rights that a guilty plea entitled. Similarly, Bennett was questioned by the trial judge, who concluded that Bennett was fully informed, that the plea was voluntary, and that it was knowingly and voluntarily entered into.

Furthermore, counsel's advice to enter a guilty plea, taken alone, is not an indication of ineffective assistance.⁴ As

² Id.

³ Kimmelman v. Morrison, 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986).

⁴ Beecham v. Commonwealth, 657 S.W.2d 234 (Ky. 1983).

the Commonwealth properly notes, this is especially true in cases where the facts may not elicit sympathy toward the defendant from jurors.⁵ The indictment alleged facts which, if believed by the jury at trial, would not engender sympathy towards Bennett. Bennett may have avoided a longer sentence by avoiding trial, and this apparent belief constitutes a legitimate reason for counsel's advice to accept the plea agreement.

Finally, Bennett's assertion that his step-daughter's testimony, if taken, would have affected the outcome of the case is purely speculative and not supported by the record. As such, it is not persuasive and does not support his contention that the trial court erred in denying his motion for relief.⁶

For the foregoing reasons, we affirm the order of the Jefferson Circuit Court denying Bennett's motion for RCr 11.42 relief.

ALL CONCUR.

BRIEF FOR APPELLANT:

Benjamin Bennett, Pro Se
West Liberty, KY

BRIEF FOR APPELLEE:

Hon. Gregory D. Stumbo
Attorney General

Bryan D. Morrow
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Frankfort, KY

⁵ Johnson v. Commonwealth, 103 S.W.3d 687 (Ky. 2003).

⁶ Haight v. Commonwealth, 41 S.W.3d 436 (Ky. 2001).