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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001738-MR

WILLIAM LAMAR TAYLOR APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 03-CR-001157

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: TACKETT AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.[1]

EMBERTON, SENIOR JUDGE: On September 30, 2003, William Lamar Taylor pleaded guilty to second-degree burglary, two counts of third-degree rape, two counts of third-degree sodomy, and third-degree unlawful transaction with a minor. On November 18, 2003,

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[1] Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

in accordance with the plea agreement, he was sentenced to five years' imprisonment. He now appeals from a summary denial of his RCr 11.42 motion wherein he alleged that his plea was not knowingly and voluntarily entered because his counsel did not inform him that he would have to complete a twenty-four month sex offender treatment program before becoming eligible for parole.

The standard for proving ineffective assistance of counsel is set out in Strickland v. Washington.[2] "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."[3]

When a guilty plea is entered and it is later alleged that counsel inadequately advised the defendant to enter a guilty plea, this court's inquiry is similar to that of a trial that has resulted in a conviction. The question is whether but for counsel's alleged errors, there is a reasonable probability that the defendant would have pleaded not guilty and insisted on a trial.[4]

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

[3] Haight v. Commonwealth, 41 S.W.3d 436, 441 (Ky. 2001), cert. denied, 534 U.S. 998 (2001).

[4] 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.[5] A reviewing court will not indulge simply in second-guessing counsel's advice. It must look to the circumstances of the case to determine whether counsel rendered professionally competent assistance.[6] With these general principles in mind, we review Taylor's claim.

Taylor contends that his counsel informed him that he would be eligible for parole after serving 20% of his five year sentence but, in fact, under KRS 197.045(4) his status as a sex offender renders him ineligible for parole until completion of a sex offender treatment program, a program that requires a minimum of twenty-four months to complete. Generally, the law does not require counsel to inform a defendant of all parole eligibility laws. Although Boykin v. Alabama[7] requires that a guilty plea be voluntary, reliable, and intelligently made, "Boykin does not mandate that a defendant must be informed of a 'right' to parole."[8] The defendant who enters into a plea of his own free will does not have to be aware of all possible

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[5] Beecham v. Commonwealth, 657 S.W.2d 234, 236-237 (Ky. 1983).

[6] Harper v. Commonwealth, 978 S.W.2d 311, 315 (Ky. 1998), cert. denied, 526 U.S. 1056 (1999).

[7] 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

[8] Turner v. Commonwealth, 647 S.W.2d 500 (Ky.App. 1982).

consequences of his plea and all alternative courses of action.[9] However, "gross misadvice concerning parole eligibility can amount to ineffective assistance of counsel."[10] In Sparks, the petitioner alleged that his counsel told him that he faced a possible penalty of life without parole. Seeing this as an entirely dismal prospect, the defendant pleaded guilty when in fact there was no such sentence under Kentucky law. The record in this case clearly distinguishes it from Sparks where there was gross misadvice so as to raise an issue of fact as to the effectiveness of counsel's representation.

During the plea negotiations, the commonwealth sent a letter to appellant's attorney discussing at length the sex offender treatment program, specifically that Taylor would be subject to a period of conditional discharge and sex offender registry requirements. Although it does not establish that Taylor's attorney communicated to him the details of the plea, it does indicate that counsel had knowledge of the sex offender laws and that he conveyed this information to his client. Moreover, the record demonstrates that Taylor was given a sex offender risk assessment evaluation prior to sentencing the result of which was discussed in court including the recommendation that the sex offender treatment be conducted in

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[9] Id. at 501.

[10] Sparks v. Sowders, 852 F.2d 882, 885 (6th Cir. 1988).

an institutional setting. Taylor did not indicate during either the evaluation or discussion that he did not understand the reason for the preliminary process or that he would be required to complete the program.

Based on the record, we agree with the trial court that Taylor's allegations are without factual or legal basis and there was no need for a hearing.[11] Even assuming counsel did not precisely inform Taylor of the length of completing the treatment program and his possible parole eligibility date, it did not constitute gross misadvice.

The order denying Taylor's RCr 11.42 motion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
William Lamar Taylor, Pro Se LaGrange, Kentucky	Gregory D. Stumbo Attorney General of Kentucky Samuel J. Floyd, Jr. Assistant Attorney General Frankfort, Kentucky

[11] Harper, supra.