

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001786-MR
AND
NO. 2005-CA-000744-MR

LARRY LUTTRELL

APPELLANT

APPEALS FROM JEFFERSON CIRCUIT COURT
v. HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NOS. 02-CR-002008 AND 02-CR-001039

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: JOHNSON AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.¹
TAYLOR, JUDGE: Larry Luttrell brings Appeal No. 2004-CA-001786-MR from an August 5, 2004, Opinion and Order of the Jefferson Circuit Court summarily denying his Ky. R. Crim. P. (RCr) 11.42 motion to vacate his twenty-year sentence. Luttrell also brings Appeal No. 2005-CA-000744-MR from a March 8, 2005, Opinion and Order of the Jefferson Circuit Court summarily denying his RCr

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

11.42 motion to vacate his twenty-year sentence in a separate indictment. We affirm.

In May 2002, appellant was indicated by the Jefferson County Grand Jury upon the offenses of manufacturing methamphetamine, trafficking in a controlled substance, possession of a controlled substance, tampering with physical evidence, and possession of drug paraphernalia (Action No. 02-CR-1039). In September 2002, appellant was again indicted by the Jefferson County Grand Jury upon the offenses of manufacturing methamphetamine, trafficking in a controlled substance, and possession of a controlled substance (Action No. 02-CR-2008).

Pursuant to a plea bargain with the Commonwealth, appellant entered a guilty plea to all charges in Action Nos. 02-CR-1039 and 02-CR-2008. In accordance with the plea bargain, appellant was sentenced to twenty years' imprisonment in Action No. 02-CR-1039 and to twenty years' imprisonment in Action No. 02-CR-2008, these twenty-year sentences were ordered to run concurrently for a total term of twenty years.

Thereafter, appellant filed separate *pro se* RCr 11.42 motions to vacate his sentences in both cases. The circuit court appointed counsel to assist appellant with these motions. On March 8, 2005, the circuit court entered an Opinion and Order denying appellant's RCr 11.42 motion in Action No. 02-CR-1039,

and on August 5, 2004, the circuit court entered an Opinion and Order denying appellant's RCr 11.42 motion in Action No. 02-CR-2008. These motions were denied without evidentiary hearings. These appeals follow.

Appellant initially contends that trial counsel was ineffective for advising him to plead guilty in Action No. 02-CR-2008, thus rendering his guilty plea involuntary. To prevail, appellant must prove that trial counsel's performance was deficient and that such deficiency so affected the outcome of the plea process that but for the errors there is a reasonable probability that appellant would not have pleaded guilty and would have insisted upon going to trial. See Hill v. Lockhart, 474 U.S. 52 (1985); Sparks v. Commonwealth, 721 S.W.2d 726 (Ky.App. 1986). An evidentiary hearing is only mandated if the motion raises grounds that could not be conclusively refuted upon the face of the record. Lewis v. Commonwealth, 411 S.W.2d 321 (Ky. 1967).

Specifically, appellant argues that trial counsel's advice to plead guilty was seriously flawed because appellant did not possess all the chemicals necessary to sustain a conviction for manufacturing methamphetamine under Kentucky Revised Statutes (KRS) 218A.1432(1)(b). Pursuant to Commonwealth v. Hayward, 49 S.W.3d 674 (Ky. 2001) and Kotila v. Commonwealth, 114 S.W.3d 226 (Ky. 2003), appellant maintains

that KRS 218A.1432 requires a defendant to possess all the necessary chemicals or equipment to manufacture methamphetamine before a conviction can be had thereunder. As appellant did not possess anhydrous ammonia, he contends the Commonwealth did not have sufficient evidence to sustain a conviction for manufacturing methamphetamine under KRS 218A.1432.

Since the filing of appellant's brief, the law in this Commonwealth has changed. In Matheney v. Commonwealth, 191 S.W.3d 599 (Ky. 2006), the Court overruled Kotila and held that a defendant must only possess two or more chemicals or items of equipment with intent to manufacture methamphetamine to sustain a conviction under KRS 218A.1432. Given the Matheney Court's interpretation of the statute in question, we reject appellant's contention that trial counsel was ineffective for advising him to plead guilty.

Appellant next maintains the circuit court committed error by denying his RCr 11.42 motions in Action Nos. 02-CR-1039 and 02-CR-2008 without conducting evidentiary hearings. To sustain this allegation, appellant argues:

Nowhere in the record of Indictment No. 02-CR-1039 or 02-CR-2008 is there any information which shows how much research and pretrial preparation appellant's attorney did prior to advising appellant to plead guilty. The record also does not reflect defense counsel's advice to appellant concerning the validity of the manufacturing methamphetamine charge.

Appellant's Brief at 14.

Appellant has failed to demonstrate entitlement to an evidentiary hearing. The above allegations of ineffective assistance of trial counsel are conclusory and lack any specific basis in fact. Furthermore, appellant failed to allege how he suffered prejudice resulting from the above general allegations of ineffective assistance of trial counsel. Simply put, we conclude that appellant's claims of ineffective assistance of trial counsel were refuted upon the face of the record and the circuit court did not err by summarily denying the RCr 11.42 motions.

For the foregoing reasons, the Opinions and Orders in Appeal No. 2004-CA-001786-MR and Appeal No. 2005-CA-000744-MR are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Edward L. Gafford
Assistant Public Advocate
Department for Public Advocacy
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Jeffrey A. Cross
Assistant Attorney General of
Kentucky
Frankfort, Kentucky