

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-001964-MR

TONY WARF

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE GEOFFREY P. MORRIS, JUDGE  
INDICTMENT NO. 01-CR-001956

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, McANULTY, AND TACKETT, JUDGES.

DYCHE, JUDGE: Tony Warf was arrested on May 19, 2001, for the burglary of JC's Cigarette Outlet. In exchange for immunity on that charge, Warf agreed to act as police informant on some unsolved burglaries/robberies of other tobacco outlets. On August 15, 2001, Warf was indicted for multiple counts of first degree robbery, burglary, and the status offense of persistent felony offender (PFO) in the first degree, for crimes committed

on April 9, 2001. The indictment was based on information inadvertently supplied by Warf in July 2001.

Warf filed a motion to suppress statements he had made to the police. The trial court denied the motion, finding that the plea negotiations did not include the residential burglaries and robberies for which Warf was indicted; rather the agreement encompassed only the offenses concerning tobacco outlets. The trial court held that the Commonwealth, by not indicting Warf on the "cigarette robberies," had met its part of the bargain.

Warf entered a subsequent guilty plea to facilitation to commit the crimes and the reduced recidivist charge of PFO in the second degree. He was sentenced to a total of twelve years' imprisonment.

In August 2004, Warf filed his motion for post-conviction relief pursuant to RCr 11.42. The trial court summarily denied it, and Warf appeals. We affirm.

Warf argues that the trial court erred in denying his RCr 11.42 motion. His attack is threefold: he insists that (1) he was entitled to an evidentiary hearing on the motion; (2) trial counsel was ineffective for failing to preserve appellate issues by means of a conditional guilty plea (RCr 8.09); and (3) the cumulative effect of counsel's errors rendered the judgment infirm. We shall address the issues in the order presented.

Warf was not entitled to an evidentiary hearing. Warf's allegations in support of his motion were able to be refuted on the face of the record; therefore, no evidentiary hearing was required. RCr 11.42(5); Hodge v. Commonwealth, 116 S.W.3d 463, 468 (Ky. 2003), cert. denied, 541 U.S. 911 (2004).

Nor was counsel ineffective for not preserving the suppression issue by means of a conditional guilty plea. The matter was well briefed, a lengthy hearing was held, and the trial court addressed the motion to suppress in painstaking detail prior to Warf's change of plea in this indictment. And Warf's plea was entered only after a full Boykin v. Alabama, 395 U.S. 238 (1969), colloquy. Warf, not new to the criminal justice system, acknowledged being advised of all his rights before waiving them. He did not receive ineffective assistance of counsel.

Warf lastly claims that the cumulative effect of the alleged errors of counsel requires reversal. We cannot agree. "In view of the fact that the individual allegations of ineffective assistance of counsel are unconvincing, they can have no cumulative effect." Sanborn v. Commonwealth, 975 S.W.2d 905, 913 (Ky. 1998). See also Welborn v. Commonwealth, 157 S.W.3d 608, 615 (Ky. 2005); and Johnson v. Commonwealth, 180 S.W.3d 494, 503 (Ky.App. 2005).

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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