

RENDERED: SEPTEMBER 2, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001989-MR
AND
NO. 2004-CA-001990-MR

ANTHONY WENTWORTH

APPELLANT

v. APPEAL FROM HENRY CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NOS. 98-CR-00017 AND 98-CR-00045

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: TACKETT AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

TACKETT, JUDGE: Anthony Wentworth appeals from an order of the Henry Circuit Court denying his request for post-conviction relief pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42. Wentworth argues that the trial court erroneously

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 KRS 21.580.

refused to find that his original plea agreement was illegal. This issue has already been resolved adversely by the Kentucky Supreme Court on direct appeal. He also contends that the trial court abused its discretion in determining, without an evidentiary hearing, that his trial counsel rendered effective assistance. Because Wentworth's claim that he was coerced into entering a plea is refuted by the record, the trial court had no obligation to hold a hearing on his motion. Thus, the trial court's order is affirmed.

Wentworth's first indictment, in April 1998, charged him with several serious offenses, including first-degree rape and first-degree sodomy. The victim of these offenses was the thirteen year-old daughter of a woman he was dating. He was released on bond and, in August 1998, charged in a new indictment with first-degree rape, first-degree burglary and kidnapping involving the same victim. This time, Wentworth remained in custody. In 2000, Wentworth's trial counsel negotiated an extremely favorable plea deal: Wentworth would be permitted to enter an Alford plea and sentencing would be delayed for two years. Prior to his sentencing, Wentworth would be released on bond subject to a very strict set of conditions, including supervision, approved employment, sex offender treatment, obtaining a GED, no contact with his victim or her family, and no unlawful behavior. If Wentworth complied with

all of the conditions of his release, at the end of two years, the trial court would permit him to withdraw his plea and plead guilty to lesser offenses with a probated sentence. On the other hand, failure to abide by these restrictions would result in imposition of a sentence of imprisonment on the original charges.

Eleven months later, the Commonwealth asked the trial court to revoke Wentworth's bond and impose sentence due to his failure to prove that he was working the correct number of hours at an approved location. The trial court issued an order finding Wentworth in violation of his release conditions. Wentworth filed a motion to reconsider which the trial court granted. However, the court's final order found Wentworth in violation of his plea agreement because he committed forgery by presenting a falsified GED in an effort to obtain employment. He then filed a motion to withdraw his guilty plea, arguing that the plea agreement was not authorized under the sentencing statutes. The trial court denied his request and this decision was upheld, in an unpublished opinion, by the Kentucky Supreme Court. Wentworth was eventually sentenced to twenty years' imprisonment. He then filed a motion for relief, under RCr 11.42, asking for his guilty plea to be set aside. He again argued that the plea agreement was illegal and further alleged that his trial counsel was ineffective in advising him to plead

guilty. The trial court denied this motion without a hearing, and this appeal followed.

We turn first to Wentworth's contention that the trial court erred in failing to find that he was entitled to relief on the ground that his plea agreement was illegal. This matter has already been directly addressed by our state's highest court. RCr 11.42 motions are not meant as an avenue to obtain relief for claims that have been previously considered on direct appeal. Thus, Wentworth fails to prove that the trial court acted erroneously in refusing to invalidate the plea agreement.

Wentworth next argues that the trial court improperly applied Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) in determining that his trial counsel was ineffective. Strickland sets the bar for ineffective assistance of counsel high; serious professional errors on the part of counsel which actually prejudice the defendant are required in order to sustain a claim of ineffective assistance. Further, in order to overturn a guilty plea, Wentworth needs to prove that, but for counsel's unprofessional errors, he would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 293 (1985). On appeal, Wentworth claims that his attorney refused to prepare for trial and threatened to withdraw from his case unless he pled guilty. This claim is

easily refuted on the face of the record and, thus, no evidentiary hearing was required.

The trial court reviewed the record of Wentworth's guilty plea and found that it was knowingly, voluntarily and intelligently entered. Further, Wentworth's trial counsel stated on the record that he was prepared to try the case and Wentworth acknowledged that he was satisfied with counsel's representation. Wentworth now argues that this shifts the test for ineffectiveness from an inquiry into professional standards of practice to a client's personal evaluation of counsel. We disagree. The trial court's ruling relied heavily on statements Wentworth made during his plea, specifically his testimony that no one had threatened him or offered him anything off the record in order to induce him to plead guilty. This evidence of record was precisely the type of evidence considered by the Court in Ford v. Commonwealth, 453 S.W.2d 551 (Ky. 1970), in an opinion upholding a trial court's denial of post-conviction relief without an evidentiary hearing.

For the foregoing reasons, the judgment of the Henry Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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