

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002482-MR

JEFFREY ALLEN MORRIS

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE PAUL E. BRADEN, SPECIAL JUDGE
INDICTMENT NO. 02-CR-00095

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND MINTON, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

HUDDLESTON, SENIOR JUDGE: Jeffrey Allen Morris appeals *pro se* the denial by Pulaski Circuit Court of his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion seeking to have his conviction set aside. Morris pleaded guilty to complicity to commit the murder of Pulaski County Sheriff Sam Catron. In exchange for his plea, Morris was sentenced to life imprisonment without the possibility of parole for twenty-five years. On

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.

appeal Morris contends his trial counsel rendered ineffective assistance which warrants reversal of his conviction.

Morris was indicted on April 24, 2002. Together with two co-defendants, Danny Shelley and Kenneth White, Morris was charged in the sniper-style shooting death of Sheriff Catron. At the time of his death, Sheriff Catron was a candidate for re-election, and Morris was his opponent in the race. Morris had previously served as a deputy sheriff under Sheriff Catron, but was fired from that position. Shelley, the confessed "trigger man," entered a guilty plea and agreed to testify against White and Morris, who were granted separate trials.

Morris fired his first pair of defense attorneys for failing to reach a satisfactory plea agreement and subsequently hired two new defense attorneys who were his counsel of record for the remainder of the case. After numerous pre-trial proceedings, Morris entered a guilty plea two weeks before his trial was scheduled to begin. As a condition of his plea, Morris agreed to testify for the prosecution in White's trial.

Morris's claims are presented in a long, rambling brief. However, due to the severity of the punishment involved, we address the claims in the order presented in the brief for the Commonwealth. Morris faults counsel's alleged failure to (1) obtain a change of venue; (2) inform him of aggravating factors; (3) have the death penalty declared disproportionate;

(4) enforce a non-prosecution agreement; (5) attempt to suppress incriminating statements; (6) develop defenses; and (7) seek to quash the indictment. Morris also claims that his counsel, the Commonwealth's Attorney and the trial judge coerced him to enter a guilty plea.

On the day he entered a guilty plea, Morris appeared before the circuit court and engaged in a lengthy plea colloquy pursuant to *Boykin v. Alabama*.² Morris and both his attorneys acknowledged that he understood his constitutional rights and the attendant consequences of a guilty plea. Morris stated he was satisfied with his attorneys' representation, and he claimed to be fully informed of the charges against him as well as potential defenses.

It is well settled that "a voluntary guilty plea . . . waive[s] all defenses other than that the indictment charges no offense."³ Morris, however, argues his plea was involuntary due to alleged ineffective assistance of counsel.

We must consider a two-part test when evaluating a claim of ineffective assistance in a guilty plea proceeding:

- (1) that counsel made errors so serious that counsel's performance fell outside the wide range of professionally competent assistance; and
- (2) that the deficient performance so seriously affected the

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

³ *Centers v. Commonwealth*, 799 S.W.2d 51, 55 (Ky. App. 1990).

outcome of the plea process that, but for the errors of counsel, there is a reasonable probability that the defendant would not have pleaded guilty, but would have insisted on going to trial.⁴

Morris first argues counsel were ineffective because they failed to obtain a change of venue. Morris's counsel twice moved for a change of venue. The circuit court declined to rule on the motions until he attempted to seat a jury. The court said that if the attempt to select an impartial jury was unsuccessful, he would, at that point, consider the motion. Morris's subsequent plea of guilty obviated the necessity of a ruling on the motion. Morris contends that he would not have pleaded guilty if counsel had been more persistent in seeking a change of venue. This claim is obviously without merit. The court did not rule on the motion because Morris pleaded guilty. Counsel made the motion (twice) and sought a ruling from the court. This is all that was required of them.

Morris's next two arguments can be addressed together. He claims counsel were ineffective because they failed to inform him of aggravating factors and failed to have the death penalty declared disproportionate. It is unclear how Morris could have been unaware of the aggravators making the crime a capital

⁴ *Sparks v. Commonwealth*, 721 S.W.2d 726, 727 (Ky. App. 1986) (citing *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985)).

offense.⁵ The Commonwealth's Attorney served notice, as required, of his intention to seek the death penalty and gave notice of the aggravating circumstances within weeks of Morris's arrest. The trial court also recited the aggravators to Morris several times during his plea colloquy, and Morris acknowledged he understood.

Additionally, Morris's counsel moved the court to declare the death penalty disproportionate in light of *Smith v. Commonwealth*.⁶ In *Smith*, the Supreme Court acknowledged that a trial court has discretion to preclude consideration of aggravating factors by the jury if the death penalty would be a disproportionate sentence in light of the evidence.⁷ In this case, Morris contends counsel did not vigorously argue that the "triggerman" who fatally shot Sheriff Catron entered a guilty plea and was sentenced to life without the possibility of parole for twenty-five years. The crux of Morris's contention is that he would have insisted on going to trial were there no chance he could have received the death penalty. "[T]here is no automatic

⁵ The final judgment listed the aggravating factors as: "victim, Sam Catron, was engaged in the lawful performance of his duties at the time of his death; the victim was a public official killed with in the course of his duties; the murder was committed in order for [Morris] to receive profit; and the act of murder constituted a great risk of death to more than one (1) person in a public place by means of a weapon."

⁶ 634 S.W.2d 411 (Ky. 1982).

⁷ *Id.* at 413.

exemption of the non-trigger man from the death penalty."⁸ Rather, a court may consider the non-trigger man's involvement in the crime, and if appropriate, "imposition of the death penalty is not forbidden."⁹ Morris's counsel did what was required of them and performed in a professionally competent manner.

Morris next argues his counsel were ineffective for failing to pursue a "non-prosecution" agreement the police allegedly made with Morris. In the order denying RCr 11.42 relief, the trial court cited an excerpt from Morris's interview with police investigators prior to his arrest. Morris admitted to the officer that he understood the police could not make any promises to him. Consequently, Morris has failed to allege with any specificity that a non-prosecution agreement existed, and the conversation with the investigator refutes his claim on its face. Morris's counsel did not render ineffective assistance when they failed to pursue a nonexistent agreement.

Morris next contends counsel were ineffective for failing to obtain suppression of incriminating statements he made to the police. Counsel filed a motion to suppress, and a suppression hearing was held to consider recorded statements Morris gave during police interrogation. Morris's attorneys

⁸ *Stanford v. Commonwealth*, 854 S.W.2d 742, 744 (Ky. 1993).

⁹ *Id.*

vigorously urged the trial court to suppress the statements, but the court denied the motion in a comprehensive written order. Counsel unquestionably advocated Morris's position in a professionally competent manner.

Morris next contends counsel were ineffective for failing to develop adequate defenses to the charged crime. Morris alleges he would have gone to trial had counsel advised him of a viable defense strategy, rather than encouraging him to plead guilty. "[C]ounsel [have] a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."¹⁰ Morris's counsel made reasonable and strategic decisions which aided his defense. They filed numerous pre-trial motions to protect Morris's rights and ensure a fair trial. Counsel were faced with an unfavorable ruling on the suppression hearing, and the triggerman agreed to testify against Morris at trial. Furthermore, it was a reasonable strategy for counsel to advise Morris to plead guilty rather than go to trial, thereby avoiding a possible death sentence.¹¹ Consequently, Morris is unable to show counsel made errors so serious as to render professionally incompetent assistance.

¹⁰ *Strickland v. Washington*, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674 (1984).

¹¹ *See Id.*

Morris alleges the indictment was improper, and counsel should have moved to quash it. Morris's claims do not have any tangible basis in fact. There is nothing in the record, and Morris does not point to any evidence, to suggest that the indictment process was illegal; Morris's allegations are all speculative. Accordingly, counsel were not ineffective.

Morris's next claim is that he was coerced into pleading guilty by his counsel, the trial judge and the Commonwealth's Attorney. The record reveals a thorough plea colloquy between Morris and the trial judge, in addition to an agreed motion to plead guilty and a pre-printed guilty plea form signed by Morris and his attorneys. Likewise, Morris advised the court that he was pleading guilty of his own accord without any promises or coercion from any source. "Solemn declarations in open court carry a strong presumption of verity."¹² Further, the trial court is in the best position to evaluate the circumstances facing the defendant at the time the plea is entered.¹³ In sum, the record clearly shows that Morris's plea was entered into voluntarily and without coercion.

Morris's final argument was not addressed in the Commonwealth's brief. He contends the trial court improperly cited the record of White's jury trial in its order denying RCr

¹² *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S. Ct. 1621, 1629, 52 L. Ed. 2d 136 (1977).

¹³ *Centers*, *supra*, note 3, at 54.

11.42 relief. The order denying Morris RCr 11.42 relief quotes inculpatory testimony of Morris in the White trial, and the court also noted that an impartial Pulaski County jury was selected in the White trial implying that a change of venue for Morris was unnecessary. It is altogether proper for a trial judge to take judicial notice of other proceedings in his own court.¹⁴ This final claim by Morris also lacks merit.

The order denying Morris's motion for RCr 11.42 relief is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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¹⁴ *Mills v. Commonwealth*, 170 S.W.3d 310, 336 (Ky. 2005).