

RENDERED: MARCH 10, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-002533-MR

ROGER ALEXANDER ISABLE

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE JOHN R. GRISE, JUDGE  
ACTION NO. 00-CR-00669

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: TACKETT, TAYLOR, AND VANMETER, JUDGES.

TACKETT, JUDGE: Roger Isable appeals, *pro se*, from an order of the Warren Circuit Court denying his request for post-conviction relief pursuant to Kentucky Criminal Rule (RCr) 11.42. Isable argued in an evidentiary hearing that his defense counsel was ineffective for failing to request that the charges against him be dismissed for failure to prosecute and performing an inadequate investigation before advising him to plead guilty. The trial court's order points out that Isable obtained an

exceptionally favorable plea agreement, and refused to find that his counsel was ineffective. We agree and affirm the trial court's order.

Isable was indicted and charged with first-degree trafficking and being a second-degree persistent felony offender on October 25, 2000. Despite the fact that he was being held in state custody almost the entire time, the outstanding bench warrant was not served on him, and he was not arraigned until August 5, 2002. He pled guilty to the trafficking charge three months later and received a fifteen-year probated sentence and dismissal of the PFO charge. Isable's probation was revoked in January of 2003. He filed a *pro se* RCr 11.42 motion in October that same year. The trial court appointed counsel to supplement Isable's motion and held an evidentiary hearing. Isable testified that his defense counsel never let him listen to the tape recording of the drug buy, never sought the name of the confidential informant, and failed to move for dismissal of the charges due to failure to prosecute. The trial court found that counsel's performance did not fall outside the wide range of accepted professional standards. Strickland V. Washington, 46 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 764 (1984). The RCr 11.42 motion was denied and this appeal followed.

In order to prove ineffective assistance of counsel, Isable must demonstrate that his counsel's performance was

deficient and that counsel's deficient performance prejudiced him. Because he pled guilty, this requires a showing that, but for counsel's deficient performance, there is a reasonable chance that he would have chosen to go to trial rather than entering a guilty plea. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

The trial court reviewed the guilty plea and found that it was voluntary, intelligent and knowing. Isable's counsel testified that she met with him on several occasions to discuss his case. Counsel stated that she was certain the voice on the tape was Isable's although the drug transaction could not be clearly heard. The trial court noted that Isable was aware of the identity of the confidential informant because he stated in a letter to his attorney that the informant had a criminal record. Moreover, the trial court agreed with counsel's assessment that a motion to dismiss the charges due to failure to prosecute would not have been successful. Isable was facing a sentence of life imprisonment and was ineligible for probation. Nevertheless, the trial court noted that his attorney secured the dismissal of one of the charges and a fifteen-year probated sentence. Isable's counsel testified that Isable's goal was to be placed on probation, and Isable himself stated that he just wanted to be free. Based on the record, and the evidence introduced at the hearing, the trial court

determined that Isable failed to demonstrate defense counsel's ineffectiveness, and we agree.

For the foregoing reason, the judgment of the Warren Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Roger Isable, *Pro Se*  
Fredonia, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Clint E. Watson  
Assistant Attorney General  
Frankfort, Kentucky