

RENDERED: NOVEMBER 23, 2005; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-002562-MR

COURTNEY LOGAN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JAMES M. SHAKE, JUDGE  
ACTION NO. 03-CR-000638

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, KNOPF AND TACKETT, JUDGES.

TACKETT, JUDGE: Courtney Logan appeals from an order of the Jefferson Circuit Court denying his motion for post-conviction relief, pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42, without an evidentiary hearing. Logan argues that his attorney rendered ineffective assistance by failing to adequately investigate his case before advising him to plead guilty. In addition, Logan contends that he would not have pled

guilty had counsel advised him that he could have been convicted of a misdemeanor charge, rather than the felony charged in the indictment. We disagree that counsel's performance rendered Logan's guilty plea involuntary and, thus, affirm the trial court.

Logan was indicted for second-degree robbery after he stole another man's wallet, car keys and glasses by force. The victim, who suffered a minor injury, identified Logan from a police photo pack lineup. Logan entered an Alford plea in exchange for the minimum sentence of five years to be served concurrently with a sentence on another felony charge. He later filed an RCr 11.42 motion alleging that his counsel rendered ineffective assistance by failing to investigate and to advise Logan that a jury might have convicted him of a lesser, misdemeanor charge. The trial court overruled the motion without an evidentiary hearing, and this appeal followed.

According to Logan, the victim in the case actually owed him money, and what happened between them was not a robbery, but a dispute over the debt. He characterized his actions as a minor assault and claimed that the victim had recanted the accusation of robbery. Logan argues on appeal that his counsel was ineffective because he failed to contact the victim and also because he failed to advise Logan that a jury might have been inclined to convict him of fourth-degree

assault. He also claims his counsel failed to advise him that the Commonwealth would be required to prove all the elements of the charge against him at trial. The trial court's order held that Logan failed to show his plea was involuntary and, further, that the decision to plead guilty represented a reasonable choice among alternatives for Logan. Thus, the trial court denied the RCr 11.42 motion without a hearing.

An evidentiary hearing is unnecessary to determine issues refuted in the record. Haight v. Commonwealth, 41 S.W.3d 436 (Ky. 2001). In order to support his claim of ineffective assistance resulting in a guilty plea, Logan must demonstrate that his counsel made serious mistakes which caused him to plead guilty when he would have otherwise gone to trial. Sparks v. Commonwealth, 721 S.W.2d 726 (Ky. App. 1986). The trial court engaged Logan in a plea colloquy to determine whether he understood the charge against him and his constitutional rights. The Commonwealth summarized the evidence against Logan that would have been introduced at trial. Logan stated his understanding that his guilty plea waived all of his constitutional rights, that his attorney had discussed the charge and any possible defenses with him, and that he did not need any further time to discuss the case with his attorney. Further, Logan and his attorney both stated that it was in Logan's best interests to plead guilty. The trial Court

accepted the plea as knowing, intelligent, and voluntary. Logan also signed a motion to enter a guilty plea which has been held procedurally sufficient to establish that a plea was not involuntary. Commonwealth v. Crawford, 789 S.W.2d 779 (Ky. 1990). He fails to allege facts that would require a hearing into whether his counsel's performance forced him to enter a plea, rather than choosing to go to trial. Therefore, the trial court's order denying relief is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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