

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-000416-MR

JOHN JERONE HUGHES

APPELLANT

v. APPEAL FROM MCLEAN CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 03-CR-00056

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM AND McANULTY, JUDGES; PAISLEY, SENIOR JUDGE.<sup>1</sup>

BUCKINGHAM, JUDGE: In February 2003, John Jerone Hughes intentionally killed his father with a baseball bat. He later disposed of the body by dropping it into a well. Hughes confessed to the crime and pled guilty in the McLean Circuit Court to murder and other offenses. He was sentenced to a total

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<sup>1</sup> Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

of 20 years in prison pursuant to a plea agreement with the Commonwealth.

Approximately one year later, Hughes filed a motion pursuant to RCr<sup>2</sup> 11.42 alleging ineffective assistance of counsel and seeking to have his guilty plea and the judgment vacated. The court denied the motion without granting an evidentiary hearing. Later, the court denied Hughes's motion to alter, amend, or vacate. This appeal followed.

In order to prevail on his claim of ineffective assistance of counsel, Hughes must satisfy the two-part test set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). See also Gall v. Commonwealth, 702 S.W.2d 37, 39-40 (Ky. 1985). In order to satisfy the second prong of the two-part test in the context of a guilty plea, Hughes "must demonstrate that there is a reasonable probability that, but for counsel's unprofessional errors, he would not have pled guilty but would have insisted on going to trial." See Phon v. Commonwealth, 51 S.W.3d 456, 459-60 (Ky.App. 2001).

In his brief, Hughes raises three allegations of ineffective assistance of counsel. He maintains that a favorable ruling on any of the three will entitle him to relief from the judgment or at least to an evidentiary hearing. We find no merit in his arguments.

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<sup>2</sup> Kentucky Rules of Civil Procedure.

Hughes's first argument is that his attorney failed to conduct an independent investigation into the facts and evidence of the case. More specifically, his argument relates to the fact that he will be required to serve a minimum of 85% of his 20-year sentence before being eligible for parole because he has been classified as a violent offender. See KRS<sup>3</sup> 439.3401. He further notes that he would have been exempt from the violent offender statute if the court had determined in accordance with KRS 439.3401(5) that he was a domestic violence victim. That portion of the statute exempts a person from the violent offender statute if the court determines the person "to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or the serious physical injury of the victim."

Hughes argues that his counsel was deficient in that he failed to inform him that he would be required to serve at least 85% of his 20-year sentence because he was subject to the violent offender statute set forth in KRS 439.3401. Hughes further states that he was physically and sexually abused by his father from the time of his birth and that he killed his father when his father made yet another sexual advance toward him.<sup>4</sup> In this regard, Hughes asserts that he was entitled to an

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<sup>3</sup> Kentucky Revised Statutes.

<sup>4</sup> It is noted that Hughes was 27 years of age when he killed his father.

evidentiary hearing under KRS 439.3401(5) to determine whether he was exempt from the statute because he was a victim of domestic violence and abuse.

Hughes argues that his attorney should have asked for an evidentiary hearing under the statute so that the court could have determined that he was a victim of domestic violence or abuse and thus exempt from the requirement that he serve at least 85% of his sentence before being eligible for parole. He alleges there was an abundance of evidence available to substantiate his claim that he had been sexually and physically abused by his father for all or most of his life. He also claims that his attorney failed to read KRS 439.3401 as well as failed to inform him that he would have to serve at least 85% of his sentence.

In Turner v. Commonwealth, 647 S.W.2d 500 (Ky.App. 1982), the appellant filed an RCr<sup>5</sup> 11.42 motion alleging that his guilty plea was involuntary because he was not informed that he would be ineligible for parole for ten years. The court held that “[a] guilty plea that is brought about by a person’s own free will is not less valid because he did not know all possible consequences of the plea and all possible alternative courses of action.” Id. at 501. Therefore, as to Hughes’s claim that his attorney failed to advise him of the 85% requirement of the

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<sup>5</sup> Kentucky Rules of Criminal Procedure.

violent offender statute, we find no constitutional violation even if his attorney failed to so inform him.

The issue of whether his attorney rendered ineffective assistance by not moving the court for an evidentiary hearing concerning whether Hughes was exempt from the violent offender statute is a separate matter. The percentage of time that must be served before Hughes is eligible for parole consideration is an issue that does not involve the validity of either the guilty plea or the sentence. Therefore, should it be determined that Hughes received ineffective assistance of counsel in this regard, his conviction itself would not be disturbed. Rather, the result would involve the possibility of an evidentiary hearing to determine whether he should be exempt from the 85% requirement of the violent offender statute.<sup>6</sup>

If Hughes had alleged his attorney knew or should have known that Hughes was a victim of domestic violence or abuse, we might be inclined to vacate and remand for an evidentiary hearing on the issue of ineffective assistance. However, Hughes does not make such an allegation in his motion. For example, had he alleged he told his attorney there was a connection between his killing his father and his being a victim of his father's physical and sexual abuse, Hughes would likely have

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<sup>6</sup> An unpublished opinion of this court reached such result in a similar case. See Turner v. Commonwealth, 2002-CA-001447-MR, rendered April 9, 2004 (not to be published).

been entitled to a KRS 439.3401(5) hearing. Or, had Hughes related this information to law enforcement officers when he confessed to the crime, his attorney should have known about the information and asked for a hearing. Likewise, had the presentence investigation report from the probation and parole officer contained information concerning domestic violence or abuse, his attorney would again have been alerted to ask for a hearing.

But, Hughes does not allege in either his motion or his brief that his attorney had reason to believe Hughes might be subject to the domestic violence exception in the statute. Furthermore, having a client who had confessed to murdering his father with a baseball bat and who was also charged with other offenses including manufacturing methamphetamine, and having received a plea offer of 20 years in prison on all charges combined to run concurrently, we fail to see how counsel could have rendered ineffective assistance by not investigating into facts that he did not know may have existed.

Hughes's second argument is that his counsel failed to prepare a defense. Since Hughes voluntarily pled guilty, there was no need for his attorney to prepare a defense. A valid guilty plea waives all defenses, except that the indictment does not charge an offense. Bush v. Commonwealth, 702 S.W.2d 46, 48 (Ky. 1986).

Hughes maintains there is no evidence to indicate the incident was intentional murder. Further, he contends that the defenses of self-protection and extreme emotional disturbance existed and should have been pursued by his attorney as valid defenses. Again, Hughes has not pointed to anything in either his motion or his brief that would lead us to conclude that his attorney was aware Hughes may have been a victim of domestic violence and abuse. Furthermore, prior to actually entering his plea, Hughes had signed the guilty plea forms indicating an understanding of the proceedings and his desire to plead guilty. It was not incumbent upon his attorney to conduct an independent investigation into facts he did not know existed so as to raise possible defenses to a crime to which his client had confessed.<sup>7</sup>

Finally, Hughes argues his attorney told him that if he refused the Commonwealth's offer of 20 years for murder he could get the death sentence. He also argues that his attorney failed to explain the elements of the offense to which he was pleading guilty. Concerning the allegation that his attorney coerced him into pleading guilty by telling him that he could get the death sentence, this is refuted by the record. The plea agreement Hughes and his attorney signed stated that the penalty for murder was "20-50 years or life." Further, Hughes's

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<sup>7</sup> Again, we have no indication that Hughes's confession contained any reference to domestic violence, self-protection, or extreme emotional disturbance.

allegation that his attorney failed to explain the elements of the offense of murder prior to his guilty plea is refuted by Hughes's statement in his signed motion to enter guilty plea that he understood "the charges and any possible defenses to them."

The order of the McLean Circuit Court is affirmed.

McANULTY, JUDGE, CONCURS.

PAISLEY, SENIOR JUDGE, DISSENTS AND FILES SEPARATE OPINION.

PAISLEY, SENIOR JUDGE, DISSENTING BY SEPARATE OPINION:

I respectfully dissent. I fully agree with the majority that the record clearly refutes Hughes' claims of ineffective assistance of counsel with respect to his counsel's representation regarding his guilty pleas. I would, however, remand this matter to the trial court for an evidentiary hearing concerning counsel's decision not to pursue, on Hughes behalf, an exemption from the application of the violent offender act.

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