

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-000586-MR

CLINTON K. REAGAN

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE GREGORY A. LAY, JUDGE  
ACTION NO. 01-CR-00195

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TAYLOR AND VANMETER, JUDGES; EMBERTON,<sup>1</sup> SENIOR JUDGE.

EMBERTON, SENIOR JUDGE: Clinton K. Reagan and Shawn Malone escaped from the Bell County Forestry Camp in Laurel County, entered David L. Shafer's residence, killed Shafer, and took Shafer's vehicle. Reagan was indicted on five counts including murder, robbery in the first degree, burglary in the first degree, theft by unlawful taking over \$300, and being a persistent felony offender in the first degree. The Commonwealth sought the death penalty.

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

Following plea negotiations, the Commonwealth agreed to dismiss the theft charge and the persistent felony offender charge in exchange for a guilty plea to murder, robbery in the first degree, and burglary in the first degree. The Commonwealth recommended 35 years on the murder charge and 20 years on the burglary and robbery charges to run concurrently with the murder charge. On the same day Reagan entered his plea, Malone also pleaded guilty to murder.

More than two years after the entry of his guilty plea, Reagan filed an RCr 11.42 motion seeking to vacate the judgment alleging that trial counsel should have interviewed Malone who now claims to have lied to police when he implicated Reagan in the murder. He also claims that counsel did not sufficiently inform him of the elements of the crimes charged. The circuit court summarily denied the motion. We affirm.

A hearing on an RCr 11.42 motion is not required if the issues raised are refuted by the record, where the motion contains merely conclusory allegations and when the allegations, if true, would not invalidate the conviction.<sup>2</sup> To succeed, the movant must demonstrate that counsel made errors so serious that the performance fell outside the wide range of professionally competent assistance and that the deficient performance so seriously affected the plea process that, but for

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<sup>2</sup> Bowling v. Commonwealth, 981 S.W.2d 545, 549 (Ky. 1998).

counsel's errors, there is a reasonable probability that the movant would not have pleaded guilty.<sup>3</sup>

Reagan contends that in view of Malone's recantation of his statement to the investigating officer implicating Reagan in the crimes, his counsel erred when he failed to interview Malone prior to advising Reagan to plead guilty. Implied in this argument is that counsel was reasonably capable of anticipating Malone's recantation. Obviously, counsel could not possibly foresee such an event. And as the Commonwealth points out, Malone was represented by counsel and, therefore, could not have been questioned by Reagan's counsel. Moreover, even if Malone's new version of events could be considered newly discovered evidence, such evidence is insufficient to sustain an RCr 11.42 motion.<sup>4</sup>

The record reveals that at the time the plea was entered Reagan was fully informed of the nature of the charges and the consequences of his plea. He signed the "Motion to Enter a Guilty Plea" acknowledging that the plea was made freely, knowing, intelligently, and voluntarily and that he was represented by competent counsel. The colloquy between the circuit court and Reagan reveals that Reagan admitted his signature on the motion, was satisfied with counsel, and

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<sup>3</sup> Sparks v. Commonwealth, 721 S.W.2d 726 (Ky.App. 1986).

<sup>4</sup> Polsgrove v. Commonwealth, 439 S.W.2d 776 (Ky. 1969).

understood the facts and possible penalties. The court found the plea to be made freely, voluntarily, and intelligently and sentenced Reagan in accordance with the Commonwealth's recommendation. The record clearly refutes any allegation that the plea was not entered in accordance with Boykin v. Alabama.<sup>5</sup> His signature on the waiver form and the responses to the questions asked as to his understanding of the charges are sufficient to refute Reagan's attack on the guilty plea procedure.<sup>6</sup>

The order of the Laurel Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Clinton K. Reagan, Pro Se  
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

James C. Shackelford  
Assistant Attorney General  
Frankfort, Kentucky

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<sup>5</sup> 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

<sup>6</sup> Commonwealth v. Crawford, 789 S.W.2d 779 (Ky. 1990).