

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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000819-MR

DANNY ANGEL

APPELLANT

v. APPEAL FROM MERCER CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 02-CR-00035

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON, KNOPF, AND VANMETER, JUDGES.

JOHNSON, JUDGE: Danny Angel, pro se, has appealed from the January 11, 2005, order of the Mercer Circuit Court which denied his pro se motion to vacate judgment pursuant to RCr¹ 11.42, without holding an evidentiary hearing. Having concluded that Angel's plea was entered knowingly, intelligently, and voluntarily, and that the trial court did not err in refusing to hold an evidentiary hearing to address his motions, we affirm.

¹ Kentucky Rules of Criminal Procedure.

On June 27, 2002, Angel was indicted by a Mercer County grand jury for robbery in the first degree.² The charges arose when two white males, one identified as Angel, forced entry into the home of Lucille Dean. One of the men pushed Dean to the ground where she was forcibly held while the other man took a various amount of change and a package of cigarettes from the home before both men fled the scene.

Angel entered a guilty plea to the charge on March 11, 2003, in reliance on an offer made by the Commonwealth. In exchange for Angel's guilty plea, the Commonwealth agreed to recommend a ten-year sentence for robbery in the first degree, to run consecutively with a ten-year sentence Angel was currently serving in Marion County. The trial court entered an order on March 12, 2003, accepting Angel's guilty plea and sentenced him in accordance with the plea agreement on April 15, 2003.

On November 10, 2004, Angel filed a pro se motion to vacate judgment pursuant to RCr 11.42, as well as a motion for appointment of counsel and a request for an evidentiary hearing. The Commonwealth filed its objection to the motion on January 6,

² KRS 515.020. Robbery in the first degree is a class B felony and carries a prison sentence of not less than ten years or more than 20 years.

2005. On January 11, 2005, the trial court denied Angel's RCr 11.42 motion without holding an evidentiary hearing.³

On January 21, 2005, Angel filed a motion for new trial or amendment of judgment pursuant to CR 59.01(a) and (f).⁴ The Commonwealth filed its objection to the motion on January 27, 2005, stating that "[A]ngel attempts to reiterate the same issues upon which the Court has previously ruled." On February 1, 2005, the trial court, agreeing with the Commonwealth, summarily denied Angel's motion. This appeal followed.

Angel argues on appeal that his plea was not entered knowingly, voluntarily, or intelligently, and that his counsel was ineffective for advising him to plead guilty to robbery in the first degree because the Commonwealth could not prove that Dean had been injured when the robbery occurred and he could not have been convicted of robbery in the first degree absent the

³ Angel's motion for appointment of counsel was not addressed in any order of the trial court.

⁴ CR 59.01(a) and (f) provide as follows:

A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes:

- (a) Irregularity in the proceedings of the court, jury, or prevailing party, or an order of the court, or abuse of discretion, by which the party was prevented from having a fair trial.

. . .

- (f) That the verdict is not sustained by sufficient evidence, or is contrary to law.

element of physical injury.⁵ In addition to challenging the trial court's rejection of his claims, Angel contends the trial court erred in failing to conduct an evidentiary hearing on his RCr 11.42 motion.

However, we conclude that Angel is essentially challenging the sufficiency of the evidence against him. "It is well-settled law in Kentucky that a voluntary, intelligent plea of guilty precludes a post-judgment challenge to the sufficiency of the evidence."⁶ Therefore, our inquiry becomes whether Angel's guilty plea was voluntary and intelligent.

A guilty plea constitutes an admission of guilt to a substantive crime and the waiver of various statutory and constitutional rights.⁷ In general, a valid guilty plea waives all non-jurisdictional defects in the conviction unless they are preserved for appellate review either by entering a conditional

⁵ KRS 515.020 states as follows:

A person is guilty of robbery in the first degree when, in the course of committing theft, he uses or threatens the immediate use of physical force upon another person with intent to accomplish the theft and when he:

- (a) Causes physical injury to any person who is not a participant in the crime[.]

⁶ Thompson v. Commonwealth, 147 S.W.3d 22, 41 (Ky. 2004) (citing Taylor v. Commonwealth, 724 S.W.2d 223, 225 (Ky.App. 1986)).

⁷ See United States v. Broce, 488 U.S. 563, 570, 109 S.Ct. 757, 102 L.Ed.2d 927 (1989); Taylor v. Commonwealth, 724 S.W.2d 223, 225 (Ky.App. 1986); and Centers v. Commonwealth, 799 S.W.2d 51, 55 (Ky.App. 1990).

guilty plea or by moving to withdraw the guilty plea.⁸ This Court in Taylor stated as follows:

Entry of a voluntary, intelligent plea of guilty has long been held by Kentucky Courts to preclude a post-judgment challenge to the sufficiency of evidence. . . . The reasoning behind such conclusion is obvious. A defendant who elects to unconditionally plead guilty admits the factual accuracy of the various elements of the offenses with which he is charged. By such admission, a convicted [defendant] forfeits the right to protest at some later date that the [Commonwealth] could not have proven that he committed the crimes to which he pled guilty. To permit a convicted defendant to do so would result in a double benefit in that defendants who elect to plead guilty would receive the benefit of the plea bargain which ordinarily precedes such a plea along with the advantage of later challenging the sentence resulting from the plea on grounds normally arising in the very trial which defendant elected to forego.⁹

For a guilty plea to be constitutionally valid, it must be entered knowingly, intelligently, and voluntarily.¹⁰ RCr 8.08 requires a trial court to determine at the time of the guilty plea "that the plea is made voluntarily with

⁸ See Hughes v. Commonwealth, 875 S.W.2d 99, 100 (Ky. 1994) (stating that "[t]he general rule is that pleading guilty unconditionally waives all defenses except that the indictment did not charge an offense"); and RCr 8.09 and 8.10.

⁹ Taylor, 724 S.W.2d at 225.

¹⁰ Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Tollett v. Henderson, 411 U.S. 258, 266-67, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973); Haight v. Commonwealth, 760 S.W.2d 84, 88 (Ky. 1988); Woodall v. Commonwealth, 63 S.W.3d 104, 132 (Ky. 2002).

understanding of the nature of the charge."¹¹ "[T]he validity of a guilty plea is determined . . . from the totality of the circumstances surrounding it."¹²

The record in this case contains a preprinted form styled "Motion to Enter Guilty Plea". Angel signed the form indicating his acknowledgment and understanding of the following statements: "Because I am guilty and make no claim of innocence, I wish to plead 'GUILTY' in reliance on the attached "Commonwealth's Offer on a Plea of Guilty[,]" and "I declare my plea of 'GUILTY' is freely, knowingly, intelligently and voluntarily made, that I have been represented by competent counsel, and that I understand the nature of this proceeding and all matters contained in this document."

On March 11, 2003, when Angel entered his plea of guilty, the trial court carefully reviewed with him and his attorney the charges on which he was indicted, the possible penalties he faced under those charges, and the sentences recommended by the Commonwealth. Angel participated in an exhaustive plea colloquy in which he assured the trial court that he had not been threatened, forced, or coerced to plead

¹¹ See James v. Cain, 56 F.3d 662, 666 (5th Cir. 1995) (stating that "[a] guilty plea is invalid if the defendant does not understand the nature of the constitutional protection that he is waiving or if he has such an incomplete understanding of the charges against him that his plea cannot stand as an admission of guilt" [citations omitted]). See also Bronk v. Commonwealth, 58 S.W.3d 482, 486 (Ky. 2001).

¹² Kotas v. Commonwealth, 565 S.W.2d 445, 447 (Ky. 1978) (citing Brady v. United States, 397 U.S. 742, 749, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970)).

guilty. He also answered in the affirmative when he was asked if his attorney had kept him fully informed and if he understood the charges against him and the possible defenses. He acknowledged that he was aware of the constitutional rights he was giving up by pleading guilty.

"[T]he representations of the defendant, his lawyer, and prosecutor at such a hearing . . . constitute a formidable barrier in any subsequent collateral proceeding. Solemn declarations in open court carry a strong presumption of verity."¹³ Angel agreed that his plea was entered freely, knowingly, intelligently, and voluntarily, that he was represented by competent counsel, and that he understood the proceedings.

Our review of the trial court's denial of relief is confined to whether the motion on its face stated grounds that are not conclusively refuted by the record and which, if true, would invalidate the conviction" [citations omitted].¹⁴ "The burden is upon the [defendant] to establish convincingly that he was deprived of some substantial right which would justify the extra-ordinary relief afforded by the post-conviction

¹³ Blackledge v. Allison, 431 U.S. 63, 73-4, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977).

¹⁴ Lewis v. Commonwealth, 411 S.W.2d 321, 322 (Ky. 1967).

proceedings provided in RCr 11.42.”¹⁵ Because the record so clearly refutes Angel’s allegation that his plea was not entered knowingly, intelligently, and voluntarily, the trial court did not err in denying his motion for an evidentiary hearing.¹⁶ Furthermore, a movant is not automatically entitled to an evidentiary hearing on an RCr 11.42 motion unless there is an issue of fact which cannot be determined on the face of the record.¹⁷ “Where the movant’s allegations are refuted on the face of the record as a whole, no evidentiary hearing is required.”¹⁸

Accordingly, the order of the Mercer Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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¹⁵ Dorton v. Commonwealth, 433 S.W.2d 117, 118 (Ky. 1968).

¹⁶ See Fraser v. Commonwealth, 59 S.W.3d 448, 457-58 (Ky. 2001).

¹⁷ Stanford v. Commonwealth, 854 S.W.2d 742, 743-44 (Ky. 1993).

¹⁸ Sparks v. Commonwealth, 721 S.W.2d 726 (Ky.App. 1986) (citing Hopewell v. Commonwealth, 687 S.W.2d 153, 154 (Ky.App. 1985)).