

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000901-MR

CRAIG ROGERS

APPELLANT

APPEAL FROM CALLOWAY CIRCUIT COURT
v. HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 04-CR-00102

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: TAYLOR AND VANMETER, JUDGES; EMBERTON,¹ SENIOR JUDGE.
EMBERTON, SENIOR JUDGE: Craig Rogers entered a plea of guilty to sodomy in the first degree and, on August 31, 2004, was sentenced to twenty years imprisonment. Subsequently he filed an RCr 11.42 motion alleging that his counsel should have requested a psychological evaluation prior to the entry of his guilty plea. The circuit court summarily denied the motion. We affirm.

To establish that counsel was ineffective, the movant must demonstrate that counsel made errors so serious that

¹ 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.

counsel's performance fell outside the range of professionally competent assistance and that the performance so seriously affected the outcome of the plea process, that there is a reasonable probability that but for counsel's errors, the movant would have insisted on going to trial.² The movant must support his claim of ineffective assistance with specific facts sufficient to justify relief. Mere conclusory allegations will not justify an evidentiary hearing.³

There are no facts presented by Rogers that indicate he was incompetent either at the time of the offense or when he entered his plea. He refers to letters written to counsel during his incarceration pleading to be released to a mental health institution; his reason, however, was because his incarceration was causing anxiety and nervousness. Such a reaction is not indicative of any mental illness that would render an accused incompetent to stand trial or affect the competency of a guilty plea. As counsel properly informed Rogers, such emotional reactions to incarceration are common. There is no evidence that Rogers's behavior suggested any physical or mental condition that precluded him from

² Sparks v. Commonwealth, 721 S.W.2d 726, 727-728 (Ky.App. 1986), citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

³ Stanford v. Commonwealth, 854 S.W.2d 742 (Ky. 1993).

understanding the nature of the proceedings and the consequences of his plea.

The order denying Rogers's RCr 11.42 motion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Craig Rogers, Pro Se
Burgin, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Todd D. Ferguson
Assistant Attorney General
Frankfort, Kentucky