

RENDERED: AUGUST 17, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-001870-MR

JERAMIE D. MASSENGILL

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 02-CR-00299-01

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** * * * **

BEFORE: NICKELL AND TAYLOR, JUDGES; PAISLEY¹, SENIOR JUDGE

PAISLEY, SENIOR JUDGE: On December 1, 2004, Jeramie Massengill entered a plea of guilty to one count of murder and one count of burglary in the first degree. He was sentenced to life without benefit of parole for the murder charge and twenty years on the burglary with those sentences running concurrently. His request for relief pursuant to RCr 11.42 was denied by the trial court. He alleges the trial court erred when it denied his request for an evidentiary hearing. He additionally brings two other issues for our

¹ 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.

review. First, whether he was denied ineffective assistance of counsel because of his claim that his guilty plea was not made voluntarily and knowingly. Second, whether his guilty plea was not made knowingly and voluntarily because he was receiving medications at the time of the entry of the plea. We find no errors and affirm the judgment of the McCracken Circuit Court.

Massengill was initially appointed counsel for purposes of this appeal. The Department of Public Advocacy then filed a motion seeking to withdraw on the grounds that the appeal was “not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense.” KRS 31.110(2). We granted that motion and Massengill has proceeded with the appeal *pro se*. The Commonwealth filed a motion seeking to strike the appendix portion of Massengill's brief. In light of our opinion in this case, that motion is now denied as being moot.

An evidentiary hearing in RCr 11.42 matters at the trial court level is only required if there is a material issue of fact that cannot be resolved by an examination of the record. *Hodge v. Commonwealth*, 116 S.W.3d 463 (Ky. 2003). Our own review of the record and Massengill's allegations of error indicate that the record before the trial court was sufficient. *See Lewis v. Commonwealth*, 411 S.W.2d 321 (Ky. 1967). The trial court did not err when it decided the RCr 11.42 motion without an evidentiary hearing.

Next Massengill argues that his guilty plea was not voluntary or made in a knowing manner. We disagree. Massengill signed a motion to entry guilty plea form. Declarations in open court carry a strong presumption of reliability. *Edmonds v.*

Commonwealth, 189 S.W.3d 558 (Ky. 2006). Massengill has provided nothing to rebut the reliability of his plea except the bare assertion that it was not made in a knowing and voluntary manner. Additionally, the trial court conducted an extensive colloquy where Massengill affirmed his understanding of the sentencing recommendation, the plea of guilty and any potential defenses to the charges. He stated without hesitation that his guilty plea was given freely, knowingly, intelligently and voluntarily and that his judgment was not impaired by alcohol or drugs. The trial court was correct in finding that he was not entitled to relief under this situation.

Massengill then asserts that his plea was not knowing or voluntary because he was under the influence of medications. The previously mentioned motion to enter guilty plea form also contained a section signed by counsel indicating it was counsel's belief that Massengill's judgment was not impaired by alcohol or drugs. Massengill reiterated his own belief that neither alcohol nor drugs were impairing his ability to reason during the colloquy with the trial judge. The validity of a guilty plea is taken from the totality of the circumstances surrounding that plea. *Kotas v. Commonwealth*, 565 S.W.2d 445 (Ky. 1978). Our own viewing of the video tape record does not present us with anything to indicate Massengill was unduly influenced by any medication at the time of the plea. We will not disturb the trial court's ruling regarding an RCr 11.42 motion absent a showing that it was clearly erroneous. *See Johnson v. Commonwealth*, 180 S.W.3d 494 (Ky. App. 2005). We find nothing in the record to indicate there was any error.

Finally, Massengill's brief alludes to a number of other reasons why he believes the guilty plea, judgment and sentence should be reversed. None of these issues were ever presented to the trial court and appear now for the first time. We will not address arguments that differ from those presented to the trial court. *See Shelton v. Commonwealth*, 928 S.W.2d 817 (Ky.App. 1996).

The judgment of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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