

# Commonwealth of Kentucky

## Court of Appeals

NO. 2005-CA-002117-MR

QUENTIN BAILEY

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE CRAIG Z. CLYMER, JUDGE  
ACTION NO. 01-CR-00372

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AFFIRMING

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BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY,<sup>1</sup> SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: Quentin Bailey brings this appeal of the McCracken circuit court's denial of his request for relief pursuant to RCr 11.42. He contends that the trial court erred and he brings three issues to our attention for review. First, he argues that the trial court's determination that the record was sufficient to make a decision was not correct and an evidentiary hearing was required. Second, he states that counsel was

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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.

ineffective because she failed to attempt to suppress certain evidence and failed to properly investigate the facts of the case prior to trial. Finally, he argues that the sentence imposed was improper and contrary to statute. We do not agree and affirm the ruling of the McCracken Circuit Court.

A jury convicted Bailey of two counts of first-degree wanton endangerment, one count of first-degree possession of a controlled substance, possession of marijuana and possession of drug paraphernalia. The sentences for the three drug related charges were enhanced because Bailey was in possession of a firearm at the time of the commission of those offenses. The jury also found that Bailey was a second-degree persistent felony offender and enhanced the sentences to an aggregate consecutive term of forty-five years. Bailey filed a motion to correct the sentence and the trial court amended the sentence to twenty years pursuant to statute.

Baily filed a direct appeal with the Kentucky Supreme Court and the judgment was affirmed in an unpublished opinion in case number 2002-SC-1090-MR rendered January 20, 2005. Baily thereafter filed an RCr 11.42 motion with the trial court, which was denied without a hearing. Baily now appeals. Counsel was appointed but the Department of Public Advocacy was allowed to withdraw from the matter on motion that the appeal “is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense.” KRS 31.110(2). Bailey proceeded in the appeal *pro se*.

## **I. EVIDENTIARY HEARING**

The trial court denied the motion for relief pursuant to RCr 11.42 because the “grounds stated in said Motion are refuted by the record.” A hearing is only required if there is an issue of fact which cannot be determined from the record. *Stanford v. Commonwealth*, 854 S.W.2d 742 (Ky. 1993). The trial court was able to review the record and determine that counsel had in fact attempted to suppress certain evidence. Additionally, the trial court had already corrected the sentencing pursuant to Bailey's motion. Simple conclusionary allegations not supported by specific facts do not justify an evidentiary hearing. *Sanborn v. Commonwealth*, 975 S.W.2d 905 (Ky. 1998). Our own review of the record provided facts sufficient to render a judgment. We agree with the trial court's determination that an evidentiary hearing was not needed in order to completely address the issues Bailey raised in the RCr 11.42 motion.

## **II. INEFFECTIVE ASSISTANCE**

Bailey next suggests that counsel provided ineffective assistance when she failed to have evidence suppressed and when she failed to provide adequate mitigation evidence. Motions pursuant to RCr 11.42 alleging ineffective assistance of counsel must pass the two part test announced in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). It must be shown that counsel made errors so serious that he was not functioning as counsel guaranteed by the Sixth Amendment. *Id.* at 687. Counsel is strongly presumed to have rendered adequate assistance and to have made all significant decisions in the exercise of reasonable professional judgment. *Id.* at 690.

Bailey's attorney did in fact file a motion to suppress the handgun found at the crime scene. The trial court determined the police lawfully seized that evidence and allowed it to be presented at trial. Not being successful at suppressing lawfully seized evidence is a far cry from counsel failing to try to suppress that evidence. There is no merit to Bailey's contention. Similarly, Bailey complains that counsel failed to garner information from other sources in order to present Bailey's version of the events surrounding the crime. In fact, the witness was Bailey himself and he provided his version to both the police and counsel. That information was presented to the jury. Bailey's argument that counsel was ineffective is again without merit. Counsel's efforts allowed Bailey to have a constitutionally effective fair trial. *See Strickland, supra.* Counsel was not constitutionally ineffective in her representation.

### **III. SENTENCING ERROR**

The final issue for our review involves Bailey's argument that the sentence imposed was illegal according to statute. The jury recommended a sentence of forty-five years, running the sentences for each conviction concurrently. The trial court initially sentenced Bailey to that term of years. On motion to correct the sentence, Bailey relied on KRS 532.080(5) which controls the aggregation of consecutive indeterminate sentences and provides that the total shall not exceed the maximum length for the highest class of crime for which any of the sentences are imposed. The maximum sentence available to the trial court pursuant to that statute was twenty years. The sentence was corrected to require Bailey to serve twenty years. The trial court has already corrected Bailey's

sentence and there is nothing in the record to support his contention that the final sentence is violative of any statute or law. His request for relief from that sentence is not grounded in fact and we decline to order a sentence modified based on the mere suppositions provided in Bailey's argument.

The decisions of the trial judge were not arbitrary, unreasonable or unfair. Bailey has not provided any grounds for relief pursuant to RCr 11.42. Counsel was constitutionally effective in the presentation of the defense. The judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Quentin Bailey, *pro se*  
Central City, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
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