RENDERED: AUGUST 11, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-002159-MR

OLLIE HALL — APPELLANT

v.

APPEAL FROM FULTON CIRCUIT COURT
HONORABLE WILLIAM L. SHADOAN, JUDGE
ACTION NO. 04-CR-00047

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ABRAMSON AND BARBER, JUDGES; EMBERTON,[1] SENIOR JUDGE.

EMBERTON, SENIOR JUDGE: Ollie Hall appeals from the summary denial of his RCr 11.42 motion. We affirm.

Hall was incarcerated in the Fulton County Detention Center when he and David McDuffie, another inmate, engaged in an altercation. Hall struck McDuffie with a wooden broom causing numerous injuries and, as a result, Hall was indicted on one count of assault in the first degree and one count of persistent felony in the second degree. On July 8, 2004, Hall pled guilty to the amended charge of assault in the second degree under

[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.

extreme emotional disturbance and to persistent felony offender in the second degree. The record reveals that the trial court questioned Hall as to his understanding of the charges and of the Commonwealth's recommendation that he be sentenced to five years, enhanced to six years, and further that it informed him of his constitutional rights. Hall acknowledged that he was satisfied with his attorney and understood the consequences of his plea. His signature on the "Motion to Enter Guilty Plea" affirms his understanding of his plea and that it was freely, knowingly, intelligently, and voluntarily made.

The basis for Hall's RCr 11.42 motion is his claim that trial counsel failed to adequately investigate his claim of self-defense and automatism. Despite his plea of guilt, Hall now maintains that McDuffie first struck him with a broom and that, in self-defense, he took the broom from McDuffie and then beat him with the broom. Other than Hall and McDuffie there were no witnesses to the altercation and there is no indication that Hall suffered physical injury as a result of the alleged assault on him. However, photographs and notations in the record do show that McDuffie suffered various injuries and, as a result, was administered medical treatment. Likewise, as to Hall's claim of a mental illness there is nothing which suggests Hall suffers from any psychological condition nor does Hall specify the reason he believes he has such a condition.

RCr 11.42 requires that the movant state the specific grounds on which he challenges the conviction and specific facts relied on in support of such grounds.[2] Mere self-serving allegations will not satisfy the rule's requirement. And even if a sufficient factual basis is presented, to prevail, the movant must satisfy the two prong test established in Strickland v. Washington.[3] Hall must demonstrate that counsel's performance was deficient and that the deficiency resulted in actual prejudice affecting the outcome of the proceedings. In the context of a guilty plea, there must be a showing that here is a reasonable probability that but for counsel's errors, he would not have pled guilty and would have insisted on a trial.[4]

Hall has failed to demonstrate any factual basis for his claim of ineffective assistance of counsel and has not offered even a hint as to how any further investigation by counsel would have presented a successful defense. Absent the identity of a witness that would have aided his defense or undiscovered proof of a mental illness, a further investigation would not have revealed evidence that would have resulted in a favorable trial result.

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[2] Stanford v. Commonwealth, 854 S.W.2d 742, 748 (Ky. 1993).

[3] 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

[4] Phon v. Commonwealth, 51 S.W.3d 456, 559-460 (Ky.App. 2001).

The record refutes any claim made by Hall that his plea was not voluntarily, knowingly, and intelligently entered.[5] It was not an abuse of discretion for the circuit court to deny an evidentiary hearing; the circuit court, therefore, properly summarily denied Hall's RCr 11.42 motion.[6]

The order of the Fulton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ollie Hall
Fredonia, Kentucky

BRIEF FOR APPELLEE:

Gregory Stumbo
Attorney General

Kristin N. Logan
Assistant Attorney General
Frankfort, Kentucky

[5] Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

[6] Bowling v. Commonwealth, 981 S.W.2d 545 (Ky. 1998).