

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2005-CA-002444-MR

CLINTON BREWER

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE CRAIG Z. CLYMER, JUDGE  
ACTION NOS. 00-CR-00282, 00-CR-00282-0

COMMONWEALTH OF KENTUCKY

APPELLEE

AND: NO. 2006-CA-001126-MR

RAYFORD POOLE

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE CRAIG Z. CLYMER, JUDGE  
ACTION NOS. 00-CR-00282, 00-CR-00282-0

COMMONWEALTH OF KENTUCKY

APPELLEE

AND: NO. 2006-CA-001354-MR  
&  
NO. 2006-CA-001363-MR

RANDY SPRINGFIELD

APPELLANT

v. APPEALS FROM MCCRACKEN CIRCUIT COURT  
HONORABLE CRAIG Z. CLYMER, JUDGE  
ACTION NOS. 00-CR-00282, 00-CR-00282-0

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING IN PART AND REMANDING IN PART

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BEFORE: STUMBO AND WINE, JUDGES; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

STUMBO, JUDGE: This matter of right appeal arises from an incident which occurred on October 2, 2000, in which three men, Appellants Randy Springfield, Rayford Poole, and Clinton Brewer, went to the home of Jessie Johnson intending to rob him. Jessie Johnson was shot and killed during the robbery. All three were ultimately indicted for murder, robbery, and burglary. The Commonwealth offered all three defendants a plea bargain, but the deal required that all three plead guilty. The initial offer was rejected and

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<sup>1</sup> Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

the case went to trial. On July 1, 2002, a jury found all three guilty. The Commonwealth then made a plea offer prior to the sentencing phase of the trial. This offer was accepted by all three defendants. Springfield was convicted, pursuant to the plea, of murder, two counts of first-degree robbery, and first-degree burglary. Because he actually shot Johnson, he was sentenced to life imprisonment without parole for twenty-five years. Both Poole and Brewer were convicted of the same crimes as Springfield, but they received sentences of life imprisonment.

All three contest their sentences via Kentucky Rules of Criminal Procedure (RCr) 11.42 for a variety of reasons, which we will examine *infra*. We affirm the sentences of Springfield and Brewer and remand the case to the trial court in order for Poole to have an evidentiary hearing concerning his RCr 11.42 motion.

We will begin our discussion with Appellant Springfield. At the time of the murder, Springfield was sixteen years old. During the plea negotiations, the Commonwealth made it known that it was seeking the death penalty for all three defendants. After the guilt phase of the trial, the defendants accepted the plea agreement to avoid the possibility of receiving a sentence of death. As noted previously, Springfield was sentenced to life without parole for twenty-five years. On February 21, 2006, Springfield sought a new sentencing hearing pursuant to Kentucky Rules of Civil Procedure (CR) 60.02 and RCr 11.42. The motion was founded on a decision by the United States Supreme Court, *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), in which the Court held that the Eighth and Fourteenth Amendments prohibited the imposition of the death penalty on juveniles who committed murders before they turned eighteen years old.

Springfield contends that this ruling should entitle him to a new sentencing hearing. He argues that he only accepted the plea bargain because he did not want to face the death penalty. Since he is now no longer eligible for that sentence, he argues it is inequitable to hold him to the bargain he made in 2002, to preclude the death sentence. He essentially claims that the Commonwealth's promise to preclude a death sentence in exchange for a guilty plea is worthless.

The trial court denied Springfield's motion for a new sentencing hearing in part due to procedural issues, but also because it refused to read more into *Roper*, stating that because he was not sentenced to death, the *Roper* decision was inapplicable. We agree with the trial court. The *Roper* holding is to be read narrowly, only affecting those juveniles who were sentenced to death. A plea does not "become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise." *Brady v. United States*, 397 U.S. 742, 757, 90 S.Ct. 1463, 1473, 25 L.Ed.2d 747 (1970); *see also United States v. Bradley*, 400 F.3d 459, 463 (6<sup>th</sup> Cir. 2005); *Elkins v. Commonwealth*, 154 S.W.3d 298, 300 (Ky. App. 2004). There is "no requirement in the Constitution that a defendant must be permitted to disown his solemn admissions in open court that he committed the act with which he is charged simply because it later develops . . . that the maximum penalty then assumed applicable has been held inapplicable in subsequent judicial decisions." *Brady* at 757. Thus, even after a change in the law, a defendant is not entitled to a new sentencing hearing after having plead guilty. "Plea agreements, the Supreme Court has long instructed, may waive constitutional or statutory rights then in existence as well as those that courts may recognize in the future." *Bradley* at 463. Because *Roper* only applies to juveniles who received the death penalty, and since one

who intelligently and voluntarily enters into a plea agreement cannot later rescind it due to a change in the law, we find that Springfield's plea agreement is valid and no new sentencing hearing is required.

Appellant Brewer filed a CR 60.02 motion on August 15, 2005. In his motion, the primary argument was ineffective assistance of counsel. The trial court denied the motion on August 30, 2005. The trial court stated that not only did he have effective counsel, but a CR 60.02 motion is not the proper vehicle to vacate a sentence. Brewer had previously filed a RCr 11.42 motion, which is the proper vehicle, but it was denied. While we believe that the CR 60.02 motion may have been the incorrect motion to bring at this juncture and a relitigation of some issues brought in the original RCr 11.42 motion which was denied, since Brewer is acting *pro se*, we will give him the benefit of the doubt and respond to his allegations.

In his appeal, Brewer argues that there was insufficient evidence to prove his guilt of wanton murder, that he received ineffective assistance of counsel when counsel did not seek a psychological evaluation, and that he was coerced into entering his guilty plea because he was facing the death penalty. We find that these arguments are without merit and affirm the conviction and sentence.

Brewer's arguments can be easily dismissed. First, as to the sufficiency of evidence against him, it has long been held that the entry of a guilty plea "preclude[s] a post-judgment challenge to the sufficiency of the evidence." *Taylor v. Commonwealth*, 724 S.W.2d 223, 225 (Ky. App. 1987). Because he plead guilty, he has admitted to the "factual accuracy of the various elements of the offenses with which he is charged." *Id.*

By pleading guilty he forfeited any right to challenge the sufficiency of the evidence against him.

Second, Brewer argues that his counsel was ineffective because he should have requested a psychological evaluation. Brewer's only basis for his contention is that he believes it is common practice for a person facing a murder charge to have a psychological evaluation. He does not allege that he was suffering from any kind of psychological or mental defect at the time of the crime. Since Brewer does not allege such a problem, there was no reason for trial counsel to seek a psychological evaluation.

Finally, Brewer claims that his guilty plea was coerced by being threatened with the death penalty. We do not find that this was coercive. "[A] plea of guilty is not invalid merely because entered to avoid the possibility of a death penalty." *Brady* at 755. Taking into account the fact that he was found guilty of murder, robbery, and burglary, and that the Commonwealth was seeking the death penalty, it was a reasonable strategy for defense counsel to encourage Brewer to accept the plea agreement. For these reasons we affirm Brewer's conviction and sentence.

Appellant Poole appeals the trial court's denial of his RCr 11.42 motion. Poole argues that the court erred by overruling his motion without an evidentiary hearing, that the trial court erred by not appointing counsel to assist in his post-conviction pleadings, that his guilty plea was not knowing, intelligent, and voluntary, that he was denied effective assistance of counsel, and that he was denied due process by the cumulative effect of these errors.

Poole argues that he should have been given an evidentiary hearing for his 11.42 motion because he raised grounds for relief that contained issues which were

collateral to the record and could not be adjudicated by reference to the record. A hearing is not required unless an issue of fact is raised that cannot be determined on the face of the record. RCr 11.42(5). Poole's 11.42 motion alleges that he was denied effective assistance of counsel because trial counsel failed to fully investigate a prior conviction in Illinois. This conviction was believed by the Commonwealth to have been a felony conviction and was used as a basis for a charge of persistent felony offender (PFO) II in relation to the current crime. In fact, the Illinois conviction had been amended to a misdemeanor, a fact Poole brought to the attention of his counsel. Trial counsel apparently did not investigate this fact and chose to rely on the Commonwealth's information. Poole argues that had his counsel properly investigated this prior conviction, he would have been in a better bargaining position during the initial plea negotiations.

In order for the trial court to deny Poole an evidentiary hearing, this issue must have been clearly refuted by the record. We cannot find anything in the record that would even suggest that Poole would have had no more leverage during the initial plea negotiations had the PFO II charge been discovered to be unfounded. In fact, the record contains allegations that Poole would have accepted the initial plea agreement of 26 years imprisonment had the PFO II charge been dropped. Thus, his initial rejection of the plea was based upon the PFO II charge. The trial court's order denying the RCr 11.42 motion sheds no light on the subject. The order is full of conclusory statements and case law regarding ineffective assistance of counsel. Nowhere does the order state how the case law applies to Poole or provide specific reasoning for the denial of relief. Because the record does not contain any facts that would be determinative of this issue, we remand this case to the trial court in order for an evidentiary hearing limited to whether he would

have been in a better position during the initial plea negotiations had his trial counsel investigated the Illinois conviction. We also order the trial court to appoint Mr. Poole counsel to assist with the hearing.

Mr. Poole next asserts that he was denied effective assistance of counsel because he and his co-defendants were all represented by attorneys employed by the Kentucky Department of Public Advocacy. Even though each attorney came from a different physical office, they were all under the supervision of the Public Advocate. Poole claims that this created a conflict of interest because lawyers employed by the same legal services organization are all employed by the same “firm.” Kentucky Supreme Court Rule 3.130[3]. Further, Kentucky Supreme Court Rules 3.130(1.7) and (1.10), when read in conjunction, state that lawyers in the same firm cannot represent clients who have an adverse interest to another client. Because of this conflict of interest, Poole claims that his conviction and sentence should be vacated.

Poole relies on the case of *Peyton v. Commonwealth*, 931 S.W.2d 451 (Ky. 1996), which states that if multiple defendants are represented by the same attorney or firm, RCr 8.30(1) requires the trial judge to explain to the defendants the possibility of a conflict of interest. It further provides that each defendant will enter a statement into the record that the possibility of such a conflict has been explained to him and that the potential conflict is waived. Poole contends that the failure to comply with *Peyton* requires us to vacate his conviction and sentence. *Peyton* holds that if RCr 8.30(1) is not followed, there is a presumption of prejudice and the judgment and conviction must be reversed.

However, Poole has overlooked the fact that *Peyton* was overruled by *Kirkland v. Commonwealth*, 53 S.W.3d 71 (Ky. 2001). *Kirkland* holds that the failure to follow RCr 8.30(1) is not presumptively prejudicial and that in order for a defendant's conviction and sentence to be overturned, the defendant must show a real conflict of interest. *Id.* at 75. In the case at hand, Poole has demonstrated no basis for a finding of a real conflict of interest nor any prejudice against him or his case.

Finally we hold that the errors claimed by Poole were not so egregious as to warrant a reversal based on the cumulative error argument. Also, because we are remanding the case for an RCr 11.42 evidentiary hearing on the PFO issue, we need not comment on Poole's argument that his plea was not knowing, intelligent, and voluntary.

Based on the above reasons, we affirm the convictions and sentences of Appellants Springfield and Brewer, but remand Appellant Poole's case for an RCr 11.42 evidentiary hearing to be held in accordance with this opinion.

ALL CONCUR.

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