

Commonwealth Of Kentucky
Court of Appeals

NO. 2006-CA-000879-MR

ROBERT GLENN ELLIS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN P. RYAN, JUDGE
ACTION NO. 00-CR-001727

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: CLAYTON AND DIXON, JUDGES; GRAVES¹, SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Robert Glenn Ellis appeals the denial of his motion for relief pursuant to Kentucky Rules for Criminal Procedure (RCr) 11.42 without an evidentiary hearing. We affirm.

Ellis entered a conditional plea of guilty to one count of first-degree robbery and to one count of being a persistent felony offender (PFO) in the first-degree. He received a sentence of twenty years' imprisonment. The underlying facts of

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

this case were fully set forth by the Supreme Court of Kentucky in its unpublished opinion affirming Ellis's conviction. *Ellis v. Commonwealth*, 2001-SC-0491-MR, (rendered December 19, 2002). We will not recount them here. Subsequently, Ellis filed a motion for relief under RCr 11.42 alleging that his trial counsel was ineffective for failing to impeach the testimony of Detective Duncan during a suppression hearing. The trial court denied the motion without an evidentiary hearing. This appeal followed.

Ellis argues that his trial counsel was ineffective by failing to impeach the testimony of Detective Duncan at a suppression hearing with an alleged inconsistent statement he made at a previous probable cause hearing.

The standard of review for ineffective assistance of counsel claims in the context of guilty pleas is well established. The defendant must show that: "(1) that counsel made errors so serious that counsel's performance fell outside the wide range of professionally competent assistance; and (2) that the deficient performance so seriously affected the outcome of the plea process that, but for the errors of counsel, there is a reasonable probability that the defendant would not have pleaded guilty, but would have insisted on going to trial." *Sparks v. Commonwealth*, 721 S.W.2d 726, 728 (Ky.App. 1986).

Ellis asserts that a district court clerk's typewritten summary of Detective Duncan's testimony at the probable cause

hearing contained statements that were inconsistent with his testimony at the suppression hearing. The summary consisted of only phrases and fragments. Moreover, we have reviewed the summary and Duncan's testimony at the suppression hearing and find no evidence of any inconsistencies contained in the record. Duncan's testimony at the suppression hearing was also corroborated both by his own report written immediately following the arrest and Ellis's detailed confession. Ellis has not demonstrated any circumstances that would entitle him to relief.

Accordingly, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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