

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2006-CA-002318-MR

JASON WAYNE CAUDILL

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
INDICTMENT NOS. 00-CR-01303, 01-CR-00307  
AND 01-CR-01061

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, JUDGE: Jason Wayne Caudill appeals the denial of his RCr 11.42 motion. For the reasons herein, we affirm the circuit court's judgment denying Caudill relief from his judgment of conviction.

On his plea of guilty to ten felonies and five misdemeanors, the circuit court sentenced Caudill to twenty-five years' imprisonment and ordered him to pay \$21,025.00 in restitution. After entry of his conviction, Caudill initiated a collateral attack under RCr 11.42. In his postconviction

motion, Caudill alleged among other things that he received ineffective assistance of counsel. The circuit court denied relief. On appeal, a panel of this Court rendered an opinion partially affirming the circuit court but remanding for an evidentiary hearing. The opinion rejected almost all of Caudill's ineffective-assistance-of-counsel claims on the face of the record, but held that Caudill's claim that his attorney did not inform him that his guilty plea could result in imposition of restitution could not be adjudicated without a hearing in the circuit court.

On remand, the circuit court conducted an evidentiary hearing in which Caudill himself testified. At the conclusion of the hearing, the judge stated on the record that he did not believe Caudill's contention that his plea of guilty hinged on the question of restitution. And, in his written order denying relief, the judge wrote that Caudill "was charged with too many counts to have not known restitution would be a factor at sentencing." The circuit court again denied Caudill relief from his guilty plea.

When a defendant contends that his guilty plea is the result of ineffective assistance of counsel, his conviction may only be set aside when he demonstrates both that he received ineffective assistance of counsel and that, but for the ineffective assistance, he would not have entered a guilty plea. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Sparks v. Commonwealth*, 721 S.W.2d 726, 727-28 (Ky. App. 1986). We review

the circuit court's factual findings for clear error, and we review all legal issues *de novo*. See *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998).

Here, after having the opportunity to hear and observe Caudill testify, the circuit court found that Caudill's decision to plead guilty to charges carrying a potential sentence of up to 40 years imprisonment could not have hinged on the possibility of being ordered to pay some \$20,000.00 in restitution. Moreover, in his brief, Caudill has failed to explain to us how the circuit court's determination is clearly erroneous. We note that, under *Turner v. Commonwealth*, 647 S.W.2d 500, 500-01 (Ky. App. 1982), the failure of counsel to advise a defendant about every possible consequence of a guilty plea is not grounds for setting aside the plea. Accordingly, we hold that Caudill has failed to demonstrate that his guilty plea hinged on the question of restitution.

For the reasons above, we affirm the judgment of the Fayette Circuit Court.

ALL CONCUR.

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