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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0228-MR

RUVIEL R. HERNANDEZ — APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE BRIAN C. MCCLOUD, JUDGE
ACTION NO. 18-CR-00296

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CETRULO, McNEILL, AND TAYLOR, JUDGES.

McNEILL, JUDGE: Ruviel Hernandez appeals the order of the Greenup Circuit Court which denied his motion for relief pursuant to RCr[1] 11.42. After carefully reviewing the record and the law, we affirm.

In 2022, a jury found Hernandez guilty of committing first-degree rape of a victim under the age of 12 and four counts of first-degree sexual abuse.

[1] Kentucky Rules of Criminal Procedure.

He received a life sentence. The Supreme Court of Kentucky upheld the conviction in *Hernandez v. Commonwealth*, 671 S.W.3d 217 (Ky. 2023).

On August 19, 2024, Hernandez filed a motion pursuant to RCr 11.42 to vacate the judgment, alleging ineffective assistance of counsel. He claimed his trial counsel did not properly advise him about pre-trial offers from the Commonwealth. Hernandez also sought an evidentiary hearing. The circuit court denied the motion without a hearing on October 10, 2024, and this appeal followed.

RCr 11.42 provides a means to reverse a conviction for ineffective assistance of counsel. To succeed on such a claim, an appellant must prove that trial counsel provided ineffective assistance that caused actual prejudice. *Strickland v. Washington*, 466 U.S. 668, 692-93 (1984). "A motion made under RCr 11.42 must state facts to support it." *Sharp v. Commonwealth*, 385 S.W.2d 317 (Ky. 1964).

An evidentiary hearing is only necessary when a defendant presents "a material issue of fact that cannot be determined on the face of the record." *Cawl v. Commonwealth*, 423 S.W.3d 214, 218 (Ky. 2014) (citations omitted). The alleged material fact must be "sufficient to invalidate the conviction" for a court to be compelled to conduct a hearing. *Id.* This Court reviews a denial of an RCr 11.42 motion to determine whether the trial court abused its discretion. *Bowling v.*

Commonwealth, 981 S.W.2d 545, 548 (Ky. 1998). "The test for abuse of discretion is whether the trial [court's] decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Hernandez first alleges that his counsel failed to communicate the Commonwealth's offer of thirty years' incarceration in exchange for a guilty plea. The law is clear that "as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v. Frye*, 566 U.S. 134, 145 (2012). Further, our court has held that if an offer might result in a lighter sentence than a trial, it is proper for counsel to influence the defendant to accept it. *Osborne v. Commonwealth*, 992 S.W.2d 860, 864 (Ky. App. 1998).

Assuming counsel was ineffective in failing to convey the offer, Hernandez cannot prove prejudice. The Commonwealth later offered a fifteen-year deal, which Hernandez rejected. Therefore, Hernandez was not prejudiced by not knowing about the thirty-year offer. Because the record refutes this claim, the circuit court did not err in failing to hold an evidentiary hearing on it.

Hernandez next argues counsel was ineffective in advising him to reject the fifteen-year plea deal without explaining the risks and benefits of trial. However, this exact claim is not preserved for our review. In his RCr 11.42

motion, Hernandez argued that counsel was ineffective in telling him to reject the fifteen-year deal because he could win the case. Hernandez did not allege counsel failed to explain the risks and benefits of going to trial. Accordingly, we will address only Hernandez's claim to the circuit court.

Specifically, Hernandez alleges counsel told him, "I would not take that deal if I was you because I am going to bet [sic] this case." He claims he would have accepted the offer except for his counsel's guarantee of success at trial. The circuit court held that counsel's advice was objectively reasonable, so no evidentiary hearing was required because the record refuted Hernandez's claim. We agree.

"When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687–88. "A fair assessment of attorney performance requires that [courts] . . . evaluate the conduct from counsel's perspective at the time." *Id.* at 689. "Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* (internal quotation marks and citation omitted).

Assuming Hernandez's allegation is true, counsel's advice to reject the plea deal and go to trial was not objectively unreasonable. The United States Supreme Court has emphasized that "an erroneous strategic prediction about the outcome of a trial is not necessarily deficient performance." *Lafler v. Cooper*, 566 U.S. 156, 174 (2012). The Seventh Circuit has held that in advising a client to reject a plea deal, an attorney's performance "is deficient if the attorney grossly mischaracterizes the evidence or advises a client to reject a plea offer and go to trial in the face of overwhelming evidence and no viable defenses." *Miller v. United States of America*, 940 F.3d 371, 375 (7th Cir. 2019) (quoting *Torres-Chavez v. United States*, 828 F.3d 582, 585 (7th Cir. 2016)).

> It is not enough for a defendant to show that he faced an uphill battle at trial. The defendant needs to go further by showing that, given the apparent strength of the government's case and the likelihood of a successful defense, any reasonable attorney would have recommended forgoing trial and accepting a guilty plea.

Id. (citation omitted).

As the Commonwealth notes, Hernandez could have challenged much of the evidence against him. For instance, the victim first brought allegations against Hernandez in 2015, but he was not charged at that time. The allegations resurfaced in 2018, after the victim was required to have visitation with her mother. Because of this long delay in reporting, no physical evidence was

collected. The defendant could have also argued that the victim had a motive to lie because she did not want visitation with her mother, Hernandez's sister-in-law.

Hernandez argues that "[i]t strains credulity to advise a client to not take a plea deal for 15 years when they're facing a minimum of twenty years, a maximum of life imprisonment . . . and they confessed to all the offenses in a non-custodial setting[.]" But the confession's strength is questionable. Hernandez did not confess to all the offenses, as he claims. He repeatedly denied having intercourse with the victim and only eventually confessed to a single instance of sexual contact.

A jury could have believed this confession but found Hernandez not guilty of the other allegations. In such a case, Hernandez faced a likely five to ten years in prison versus the certain fifteen years of the plea deal. And while the risk to Hernandez, if convicted on all counts, was great, counsel would not be unreasonable, given the evidence, to believe he could create reasonable doubt in one juror's mind and acquit Hernandez of the other charges. The Commonwealth apparently had serious questions about the strength of its case because it offered Hernandez a fifteen-year plea deal on the morning of trial.

It is easy to second-guess counsel's advice with the benefit of hindsight, now that Hernandez has been convicted and sentenced to life in prison. This is why "[j]udicial scrutiny of counsel's performance must be highly

deferential." *Strickland*, 466 U.S. 668 at 689. Simply put, we cannot say that counsel's advice to reject the plea deal and go to trial, if true, was "outside the wide range of professionally competent assistance." *Id.* at 690. Because the record refutes Hernandez's ineffective-assistance allegations, the circuit court did not err in denying his RCr 11.42 motion without an evidentiary hearing.

Accordingly, the Greenup Circuit Court's order is affirmed.

ALL CONCUR.

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