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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0992-MR

STEVEN A. SCHUETZ — APPELLANT

v.

APPEAL FROM BOONE CIRCUIT COURT
HONORABLE RICHARD A. BRUEGGEMANN, JUDGE
ACTION NO. 21-CR-00818

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, ECKERLE, AND TAYLOR, JUDGES.

COMBS, JUDGE: Appellant, Steven A. Schuetz (Schuetz), appeals from an Order of the Boone Circuit Court denying his RCr[1] 11.42 motion and accompanying motion for an evidentiary hearing. After our review, we affirm.

[1] Kentucky Rules of Criminal Procedure.

On November 2, 2021, a Boone County Grand Jury indicted Schuetz for first-degree assault, first-degree strangulation, terroristic threatening, fourth-degree assault, first-degree unlawful imprisonment, and first-degree wanton endangerment. On November 16, 2022, after some dismissals and amendments, Schuetz pled guilty to second-degree assault, first-degree unlawful imprisonment, and first-degree wanton endangerment. On January 30, 2023, the trial court entered final judgment. He was sentenced to five years on each count -- to run consecutively for a term of imprisonment of 15 years.

On December 23, 2024, Schuetz tendered a motion to vacate judgment pursuant to RCr 11.42. He also filed a motion to proceed in *forma pauperis* and for appointment of counsel. By Order entered January 10, 2025, the trial court allowed Schuetz to proceed and appointed the Department of Advocacy to represent him.

In the RCr 11.42 motion that he filed *pro se* January 10, 2025, Schuetz argued that his defense counsel, Wilbur Zevely, was so ineffective as to have deprived Schuetz of his constitutional rights. He alleged that Mr. Zevely failed to adequately investigate and prepare for trial, leaving Schuetz in a position where he felt he had no choice but to plead guilty; furthermore that Mr. Zevely allowed the Commonwealth's attorney to intimidate and to threaten Schuetz into accepting the plea agreement at mediation. In addition, Schuetz contended that

"Mr[.] Zevely lied to the Movant about attorney fees." (RCr 11.42 motion, p. 2.)

Schuetz alleged that:

> Mr. Zevely spoke with Movant for the first time on or around 9/24/2021. During this discussion Zevely informed Movant that he would represent him for $7,800, to which the Movant agreed. Movant then found in the discovery received from his attorney's office, around 9/24/2021, that Mr. Zevely had received $25,000 on 9/18/2021 for "lawyer fees." See (Exhibit-2), which is a copy of the payment arrangement that states payments and dates.[2] Also in (Exhibit -2) it can be seen that Ms. Schuetz gave Mr. Zevely a check for $2,000 for an evaluation by Ed Connor, dated 12/20/2021.[3] Also in (Exhibit -2) is a copy of phone records showing calls from the Movant to Mr. Zevely to dismiss his case, the Movant was charged $87.50 for each call.
>
> The agreed upon $7,800 for attorney fees was received by Zevely at A-1 Electric[4] some time later. Some time after this, Zevely was paid another $15,000 by Movant for Divorce Fees.

(*Id.*, pp. 9-10, underline in original deleted.)

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[2] The purported "payment arrangement" in Exhibit "2" appears to be a page from a form which is substantially blank. It contains no fee arrangement, nor does it identify the matter, the attorney, or a client, and it is unsigned. The only information is that "25,000" is handwritten in following the word, "FEE"; "25,000.00 9/18" is handwritten following "PAYMENTS AND DATES," below which is written "$2000.00 (To Dr. Connor -- evaluation/ testimony) 12/2021[.]" There is no accurate evidence of what these figures represent or by whom they were written.

[3] The check payable to Ed Connor reflects it was for "Steve's Eval." The check was signed by Kelly Schuetz -- Schuetz's wife and victim -- and appears to have been drawn on their joint account. The record reflects that Dr. Connor evaluated Schuetz regarding his competency to stand trial.

[4] Schuetz's place of business.

On January 28, 2025, the Commonwealth filed a response. On January 29, 2026, Honorable Aaron Riggs entered an appearance on behalf of Schuetz. At a May 7, 2025, status conference, Mr. Riggs indicated that there would not be a supplement to Schuetz's motion and renewed the request for an evidentiary hearing. The court took the matter under submission.

By Order entered on July 5, 2025, the circuit court denied Schuetz's RCr 11.42 motion and his motion for an evidentiary hearing as follows:

> Defendant makes two allegations of ineffective assistance of counsel: (1) Defense counsel was ineffective for failing to adequately investigate his case and prepare for trial and that, but for those failures, Defendant would've opted for a trial; and (2) Defense counsel permitted Defendant to be threatened by the Commonwealth into accepting the plea offer during felony criminal mediation. . . . Defendant makes various arguments about his fee arrangement with defense counsel that ultimately cannot be addressed by RCr 11.42. . . .

(Emphasis added.) Following a discussion of the applicable law in more than five pages of findings of fact regarding Schuetz's plea colloquy, the trial court discussed the presumption of competency of attorney that a defendant must rebut: *Strickland*[5] and *Hill*.[6]

> Defendant has presented nothing to overcome that presumption. Rather, the record directly refutes

[5] *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

[6] *Hill v. Lockhart*, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985).

> Defendant's assertions. Because the record is so clear, the Court finds that Defendant is not entitled to an evidentiary hearing or the relief he seeks under RCr 11.42. Defendant participated in mediation, he later signed a plea agreement, as well as a Motion to Enter Guilty Plea in which Defendant stated he had reviewed a copy of the Indictment. At his plea, Defendant stated under oath that he had read and understood the Indictment and the plea agreement.
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> Defendant, under oath, affirmed counsel's recitation of the facts that demonstrated he committed each element of the offenses for which he was convicted. He may now regret his decision, but that is not grounds to set aside his guilty plea and conviction. Defendant was afforded ample opportunity to ask questions and to talk with his counsel on the date of his change of plea. Moreover, Defendant had two months between his guilty plea and sentencing to challenge the terms of his plea agreement. Indeed, at that sentencing hearing, the Court repeatedly asked if there was any legal reason sentence should not be imposed or whether there was anything further that Defendant wished to present or say to the Court on his behalf. All of this is clearly demonstrated by the record as quoted and detailed above. Therefore, an evidentiary hearing is not necessary as all allegations can be resolved on the face of the record. Defendant has failed to rebut either the record or the presumption that he had effective assistance of counsel, and that his plea was entered knowingly, intelligently and voluntarily.

Schuetz, by counsel, appeals. The sole issue he raises is that "[t]he trial court should have granted an evidentiary hearing regarding counsel's performance and motivations."

"Where the trial court denies a motion for an evidentiary hearing on the merits of allegations raised in a RCr 11.42 motion '[o]ur review is confined to

whether the motion on its face states grounds that are not conclusively refuted by the record and which, if true, would invalidate the conviction." *Commonwealth v. Davis*, 14 S.W.3d 9, 11 (Ky. 1999) (citing *Lewis v. Commonwealth*, 411 S.W.2d 321, 322 (Ky. 1967)).

On appeal, Schuetz claims for the first time "that trial counsel labored under an actual conflict of interest" and that this case:

> presents an open question that cannot be resolved from the face of the record, to wit: whether (1) additional payments to trial counsel, at first unknown to [Scheutz], were for the criminal matter -- which had already set an agreed fee -- or for additional legal work; and (2) if there was more legal work, on whose behalf and under whose loyalty, did trial counsel act.

Schuetz argues that "[t]rial counsel's failures correspond with a payment that Steven did not authorize. Trial counsel's apparent conflict of interest, and its correlated ineffectiveness, affected the validity of the plea."

The payment issue is not properly before us. He failed to address the *Strickland* criteria of deficiency of performance of counsel and any prejudice allegedly resulting to his case. Although Schuetz complained generally and vaguely about his attorney's fee in his RCr 11.42 motion, Schuetz ***never alleged*** before the trial court that Mr. Zevely had a conflict of interest. "A new theory of error cannot be raised for the first time on appeal." *Springer v. Commonwealth*, 998 S.W.2d 439, 446 (Ky. 1999).

Having reviewed the record, we fully agree with the Commonwealth that the trial court did not err in denying Schuetz's request for an evidentiary hearing.

Accordingly, we affirm.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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