RENDERED: NOVEMBER 23, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000901-MR

DANIEL BEASLEY — APPELLANT

v.

APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN R. GRISE, JUDGE
ACTION NO. 11-CR-00460

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, STUMBO, AND VANMETER, JUDGES.

CLAYTON, JUDGE: Daniel Beasley appeals the denial of his motion pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. Beasley raises multiple issues surrounding his juvenile transfer hearing. Following a recitation of the facts, procedural history, and the relevant standard of review, we address Beasley's arguments.

BACKGROUND

On April 7, 2011, Freddie Emberton, who had purchased alcohol from a store, was beaten about the head and torso and found lying on the ground in Bowling Green, Kentucky. The victim was flown to Vanderbilt Hospital for treatment, but he died the next day due to his multiple blunt force injuries. Three individuals appear to have been involved in robbing and murdering the victim – Beasley, Dominick Cunningham, and Jaquavion Bunton. Beasley later gave a statement to the police in which he admitted participating in robbing the victim of his alcohol, and he also admitted punching or kicking the victim. Beasley told police that the assault was fun until he learned of the victim's death.

Beasley was born July 29, 1993, making him just shy of 18 years of age when the victim was killed. Thus, his case was initially brought in district court. Following a transfer hearing, the district court judge found probable cause that Beasley committed the crimes, and it also found four factors favored transfer to circuit court.

Beasley would later enter a guilty plea to first-degree robbery and first-degree manslaughter by complicity, receiving consecutive imprisonment sentences of 10 years on each count for a total of 20 years to serve. He then filed a post-conviction motion that is the subject of the instant appeal. Following a recitation of the standard of review, we address the issues raised by Beasley.

STANDARD OF REVIEW

Ineffective assistance of counsel claims are reviewed under the standards announced in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *Gall v. Commonwealth*, 702 S.W.2d 37, 39 (Ky. 1985) ("This court is bound by the principles established by the Supreme Court of the United States in the case of *Strickland* . . ."). Trial courts have been applying these standards for decades, and "[t]here is no reason to doubt that lower courts – now quite experienced with applying *Strickland* – can effectively and efficiently use its framework to separate specious claims from those with substantial merit." *Padilla v. Kentucky*, 559 U.S. 356, 372, 130 S.Ct. 1473, 1485, 176 L.Ed.2d 284 (2010).

Under *Strickland*, a defendant must establish two errors occurred in order to obtain relief: (1) his counsel's performance was deficient; and (2) that deficiency resulted in prejudice. Under the first prong, counsel's performance is presumed to be reasonable. *Commonwealth v. McGorman*, 489 S.W.3d 731, 736 (Ky. 2016) (citing *Commonwealth v. Bussell*, 226 S.W.3d 93, 103 (Ky. 2007)). *See also Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065 (". . . a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance[.]"). To overcome this presumption, a defendant must prove more than a mere error was made by his counsel, as *Strickland* establishes that "the proper standard for attorney performance is that of reasonably effective assistance." *Id*. at 687, 104 S.Ct. at 2064. This standard is objective but is not dependent upon specific guidelines like the ABA Standards for

Criminal Justice; instead, the attorney's performance should be examined under "prevailing professional norms." *Id.* at 688, 104 S.Ct. at 2064.

"Judicial scrutiny of counsel's performance must be highly deferential." *Id*. at 689, 104 S.Ct. at 2065. We must not "second-guess counsel's assistance" or conclude an unsuccessful defense was unreasonable. *Id*. Counsel's conduct must be determined in light of all the circumstances to determine if counsel's performance fell within the "wide range of professionally competent assistance." *Id*. at 690, 104 S.Ct. at 2066.

Proving deficient performance is the defendant's burden, and one that is difficult to prove. As the United States Supreme Court recently announced, "Surmounting *Strickland*'s high bar is never an easy task." *Padilla*, 559 U.S. at 371, 130 S.Ct. at 1485.

If a defendant proves deficient performance, he must also prove that the deficient performance prejudiced his case. *Strickland*, 466 U.S. at 691, 104 S.Ct. at 2066. The defendant must prove more than just that his attorney's deficiency had a conceivable effect on the outcome, or that it impaired the presentation of the defense. *Id*. at 693, 104 S.Ct. at 2067-2068. Instead, the "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. at 694, 104 S.Ct. at 2068. When resolving the prejudice inquiry, the reviewing court must presume that the trial court or the factfinder acted according

to the law. *Id*. It must also examine the totality of the evidence before the judge or jury. *Id*. at 695, 104 S.Ct. at 2069.

On appeal of an RCr 11.42 motion where the trial court held an evidentiary hearing, "the trial court's factual findings and determinations of witness credibility are granted deference by the reviewing court." *McGorman*, 489 S.W.3d at 736 (citing *Haight v. Commonwealth*, 41 S.W.3d 436, 441-42 (Ky. 2001) (overruled on other grounds by *Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009)). The trial court's legal conclusions are reviewed *de novo*. *McGorman*, 489 S.W.3d at 736 (citing *Bussell*, 226 S.W.3d at 100).

Under these standards we now turn to the issues presented by Beasley.

ISSUES

Beasley raises four arguments on appeal. We address them in turn.

I. Was counsel ineffective during the transfer hearing?

Beasley first claims his trial counsel rendered ineffective assistance during the transfer hearing. Kentucky Revised Statutes (KRS) 640.010 provides that youthful offenders charged with capital offenses receive a preliminary hearing (also known as a transfer hearing) to determine if the child should be transferred to circuit court to be tried as an adult. At the preliminary hearing, the court must first find whether probable cause exists "to believe that an offense was committed, that the child committed the offense, and that the child is of sufficient age . . . ." KRS 640.010(2)(a). If the district court finds probable cause exists, it then has to consider eight factors to decide whether to transfer the child's case to circuit court:

1. The seriousness of the alleged offense;

2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;

3. The maturity of the child as determined by his environment;

4. The child's prior record;

5. The best interest of the child and community;

6. The prospects of adequate protection of the public;

7. The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system; and

8. Evidence of a child's participation in a gang.

KRS 640.010(2)(b). The district court judge considering these factors must then determine whether two or more of the factors favor transfer. If the district court judge finds that two or more of the factors favor transfer, the district court judge may transfer the child to circuit court, where the "child shall then be proceeded against in the Circuit Court as an adult[.]" KRS 640.010(2)(c). *See also Humphrey v. Commonwealth*, 153 S.W.3d 854, 856-57 (Ky. App. 2004).

In the instant case, Beasley had a preliminary hearing in district court before he was transferred to circuit court. Beasley's RCr 11.42 claim revolves around whether his trial counsel was ineffective at that hearing. Beasley claims that he put forth evidence at his RCr 11.42 hearing proving his trial counsel's performance was deficient at the transfer hearing, and that such deficiency

prejudiced Beasley. The trial court disagreed on both prongs. We address each prong separately.

A. Deficient performance prong.

Following the evidentiary hearing, the trial court entered a detailed order denying the RCr 11.42 motion. Regarding this claim's deficient performance prong, the trial court found and held:

> . . . the juvenile transfer procedure is a procedural probable cause proceeding to determine whether there is sufficient evidence to conclude that there exists probable cause to charge the defendant with a felony offense, and whether there is evidence that weighs in favor of transfer to circuit Court. [sic] While it has been deemed that such proceedings are critically important to juveniles, due process demands that the defendant be afforded, with the assistance of counsel, a meaningful opportunity to challenge the evidence presented.
>
> *The defendant was afforded that opportunity.* Trial counsel testified during the June 26, 2014, evidentiary hearing that, prior to the transfer hearing, he reviewed the applicable statutory standard for transfer, and reviewed whether the defendant qualified for transfer, but he did not employ the services of an expert to testify at the transfer hearing. Trial counsel argued at the transfer hearing that the defendant should not be transferred.

Order, p. 9 (emphasis and paragraph break added).

Beasley argues on appeal that the trial court erred by finding trial counsel's performance was not deficient. Beasley claims that because his counsel did not consult an expert for purposes of the transfer hearing, only consulted with one witness prior to the transfer hearing, did not put on any evidence at the transfer hearing, and erroneously testified at the evidentiary hearing that there were six

factors instead of eight factors the trial court had to consider for juvenile transfer, that his counsel's performance was deficient. Having reviewed the transfer hearing and the evidentiary hearing, we cannot find that the trial court's order is erroneous on this issue. The case of *Commonwealth v. Robertson*, 431 S.W.3d 430 (Ky. App. 2013) is illustrative.

In *Robertson*, a juvenile was charged with committing felonious sexual offenses against children he babysat. At his juvenile transfer hearing, his attorney did not call any witnesses and did not challenge false testimony the Commonwealth introduced about rehabilitation programs Robertson could participate in as a juvenile, in spite of the fact that, "[t]he law at the time of the hearing clearly refuted this testimony." *Id*. at 433. At a later evidentiary hearing, trial counsel admitted he did not prepare for the transfer hearing, he did not research relevant law, he was not familiar with juvenile rehabilitation programs, and he "relied on the judge's experience to protect his client's interest." *Id*. at 434. In light of this evidence, the trial court found that "trial counsel had 'completely abdicated his responsibility to his client at a critical proceeding[.]'" *Id*. A panel of this Court agreed.

Beasley's case stands in stark contrast to *Robertson*. Beasley's counsel did review the relevant law, was familiar with the facts of Beasley's case, did interview a witness, and did not simply rely on the trial judge to protect his client's interests. And the facts weighed heavily in favor of transferring Beasley to circuit court. Beasley was almost 18 years of age when he committed horrendous

crimes – beating a man to death to steal a single beer – and he confessed to the crime in a post-arrest interview. Given that the trial court only had to find that two of the eight factors favored transfer, and the evidence presented by the Commonwealth satisfied at least three of the elements, the totality of the circumstances left little room in which Beasley's trial counsel could operate. It is noteworthy that even Beasley's post-conviction counsel could not produce any substantial evidence to rebut these significant facts that weighed heavily in favor of transfer.

Furthermore, though Beasley now claims his attorney should have performed a more thorough investigation and retained a mental health expert, we cannot say that Beasley's counsel's investigation and performance was unreasonable in light of the totality of the circumstances. In Kentucky, attorneys are not required to conduct the most thorough and expensive investigations and defenses possible. "[T]o be sure, a reasonable investigation need not be 'an investigation that the best criminal defense lawyer in the world, blessed not only with unlimited time and resources, but also with the benefit of hindsight, would conduct,' but rather 'must be reasonable under all the circumstances.'" *Commonwealth v. Tigue*, 459 S.W.3d 372, 394 (Ky. 2015) (quoting *Haight v. Commonwealth*, 41 S.W.3d 436, 446 (Ky. 2001), *overruled on other grounds by Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009)). Instead, we are to presume trial counsel's performance was reasonable unless and until the defendant overcomes that burden.

Moreover, neither this Court nor Kentucky defense attorneys are bound by the myriad of defense-bar created guidelines for attorney performance that Beasley cites to say that his attorney's performance was deficient. As our state's highest Court has held, "We decline to be bound by the guidelines relied upon by [appellant] or, for that matter, any other similar guidelines promulgated by any legal organization or association." *Williams v. Commonwealth*, 336 S.W.3d 42, 49 (Ky. 2011). *Wiggins v. Smith*, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) ("We have declined to articulate specific guidelines for appropriate attorney conduct and instead have emphasized that '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'") (quoting *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052); *Bobby v. Van Hook*, 558 U.S. 4, 7, 130 S.Ct. 13, 17, 175 L.Ed.2d 255 (2009) (*per curiam*) ("Restatements of professional standards, we have recognized, can be useful as 'guides' to what reasonableness entails, but only to the extent they describe the professional norms prevailing when the representation took place.") (quoting *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052).

While Beasley notes these guidelines in his brief, he elected at his hearing not to present proof that the defense bar in Warren County in 2011 and 2012 adhered to these guidelines. In fact, Beasley failed to put on any proof that the prevailing standard of practice for the defense bar in Warren County at the relevant time was to obtain a mental health expert for juvenile transfer hearings.

Beasley's proffered evidence at his RCr 11.42 hearing did not meet his burden of proof. Beasley presented the testimony of Dr. Eric Drogin, a well-known psychologist. Dr. Drogin never evaluated Beasley. In fact, Dr. Drogin never even saw Beasley until the two were in court for the evidentiary hearing. Instead, Dr. Drogin interpreted some psychological tests regarding competency to stand trial that were administered to Beasley by another mental health expert many months after Beasley was indicted. Notably, Beasley did not call as a witness the mental health expert who actually administered the test.

Having reviewed the testimony, it is clear that Beasley's evidence was mostly general proof that youth's brains are not fully developed and that Beasley's scores on one psychological test showed that he may have been immature when he committed the crime. These assertions are in no way novel. In a landmark case, the United States Supreme Court announced many years prior to Beasley's crime that, "as any parent knows and as the scientific and sociological studies . . . confirm, '[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults[.]'" *Roper v. Simmons*, 543 U.S. 551, 569, 125 S.Ct. 1183, 1195, 161 L.Ed.2d 1 (2005) (alterations in original and added, citation omitted). The Court noted that "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Id*. And it further held that "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." *Id*.

at 570, 125 S.Ct. at 1195. *See also Graham v. Florida*, 560 U.S. 48, 68, 130 S.Ct. 2011, 2026, 176 L.Ed.2d 825 (2010).

In light of the well-known proposition that juveniles are less mature than adults, we cannot say that an attorney who failed to present such evidence to a trial court at a transfer hearing rendered constitutionally-deficient performance. To do so would raise the defense bar to an unsettlingly high standard. It would also waste judicial resources as transfer hearings would become lengthy ordeals for expert witnesses to recite commonplace knowledge.

Also weakening Beasley's position is the fact that Beasley's performance on the tests at the competency evaluation are suspect. Some of Beasley's tests indicated he was malingering. But rather than clear up these discrepancies by having Dr. Drogin evaluate Beasley or by calling the mental health expert who administered the tests to testify at the evidentiary hearing, Beasley and his post-conviction counsel opted to do neither. Again, it was Beasley's burden of proof. He cannot prove his constitutional rights are violated by failing to put forward evidence.

Having thoroughly reviewed the record, the evidentiary hearing, and trial counsel's performance at the transfer hearing, we cannot say that the trial court erred by finding that trial counsel's performance was not deficient. Accordingly, we affirm the trial court on this prong.

B. Prejudice.

Though *Strickland* cautions that courts have "no reason" to "address both components of the inquiry if the defendant makes an insufficient showing on one[,]" 466 U.S. at 697, 104 S.Ct. at 2069, we will nonetheless address Beasley's prejudice prong as the trial court also addressed this prong, and the Commonwealth's brief only focuses on this prong. Beasley argues principally that prejudice should be presumed pursuant to *United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), because he claims his counsel entirely abandoned him at a critical stage of the proceedings. We, like the trial court, do not agree.

In *Robertson*, a panel of this Court noted that prejudice is presumed under *Cronic* only in:

> [T]hree extreme circumstances: (1) where the accused is completely denied counsel, (2) where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, and (3) where, although counsel is available to assist the accused, the likelihood that any lawyer could provide effective assistance is so small that a presumption of prejudice is appropriate.

431 S.W.3d at 438 (citing *Cronic*, 466 U.S. at 659, 104 S.Ct. at 2047). Counsel's "failure must be complete[,]" and occur "throughout the proceeding as a whole and not [be] limited to one part of it." *Robertson*, 431 S.W.3d at 439 (quoting *Bell v. Cone*, 535 U.S. 685, 697, 122 S.Ct. 1843, 1851, 152 L.Ed.2d 914 (2002)).

In the instant case, any alleged deficiency on Beasley's trial counsel's part was not "complete" and did not occur throughout the whole proceeding.

Beasley's counsel did prepare for the hearing, participate in the hearing, and argue that Beasley should not be transferred. The cards were stacked against Beasley, however, as he participated in a robbery and murder of an innocent person. Those acts alone are sufficient to satisfy two of the transfer criteria, which is all the trial court needed to waive Beasley's case to the circuit court. *See* Issue IV, *infra*; KRS 640.010(2)(c). Thus, there was no *Cronic* prejudice.

Likewise, if, *arguendo*, trial counsel's performance were deficient, there was no *Strickland* prejudice. Again, Beasley's offenses were serious crimes (first-degree robbery and murder), KRS 640.010(2)(b)(1), the offenses were against both a person and property, KRS 640.010(2)(b)(2), and the offenses were so heinous that to adequately protect the public it was within the district court's discretion to transfer Beasley's case to circuit court, KRS 640.010(2)(b)(6). Beasley has put forth no evidence that his attorney could have changed these facts. Accordingly, there is no reasonable probability of a different outcome, even in spite of Beasley's ineffective assistance allegations.

Thus, we agree with the trial court that no prejudice occurred in the instant case. Beasley's claim fails both prongs of *Strickland*. Accordingly, we affirm the trial court's order.

II. Was counsel ineffective when he advised Beasley to enter a guilty plea?

Beasley next contends his trial counsel was ineffective when he advised Beasley to enter a guilty plea. In a lengthy and well-reasoned order, which

we adopt in full by reference, the trial court found trial counsel's performance was neither deficient nor did any alleged deficiency result in prejudice to Beasley. It also found Beasley failed to meet his burden of proof:

> The defendant was not denied the effective assistance of counsel regarding the asserted failure to conduct additional investigations. In fact, the defendant cites no exculpatory information that would have been revealed by additional investigation by trial counsel. The defendant simply states that such investigations might have provided a more complete picture of the defendant's culpability. The defendant did not require a more complete picture of his culpability because he had already provided that picture to police. Further, the information cited by the defendant was either contained in or contradicted by the discovery provided to the defendant. The defendant acknowledged that he had received and reviewed the discovery materials provided by the Commonwealth including the transcripts of the interviews conducted during the course of the investigation in this matter. He fails to cite in his motion how further interviews of the potential witnesses would have provided a more complete picture of culpability than had already been established, especially in light of his statements to the police.

Order, p. 23.

Indeed, having reviewed Beasley's arguments and the evidentiary hearing, we agree that Beasley failed to meet his burden of proof. His ineffective assistance of counsel claim on this issue is nothing more than "mere speculation" that his counsel could have unearthed more evidence that would have assisted Beasley had he gone to trial. *Rigdon v. Commonwealth*, 144 S.W.3d 283, 291 (Ky. App. 2004) (citing *Moore v. Commonwealth*, 983 S.W.2d 479, 486 (Ky. 1998)). Beasley's proof at the evidentiary hearing did not exculpate him from the crime.

Indeed, Beasley could not articulate any defense to his crime. And Beasley did not and does not deny that he participated in the robbery and murder.

At best his evidence suggests that he was guilty of a lesser crime on the murder charge. Not surprisingly, his trial attorney already managed to work out a plea deal wherein Beasley pled to manslaughter instead of murder. Given the substantial evidence against Beasley, including his own confession, the likelihood of a poor outcome at trial, and the lack of exculpatory evidence in Beasley's favor, we find that his trial counsel's investigation was reasonable under the circumstances. Likewise, we find that his trial counsel's recommendation to plead guilty is neither deficient performance nor ineffective assistance. *Vaughn v. Commonwealth*, 258 S.W.3d 435, 440 (Ky. App. 2008).

Furthermore, under the prejudice inquiry Beasley had to prove that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). Beasley utterly failed to prove prejudice, as neither he nor his appellate attorney can articulate a valid defense that would constitute a reasonable probability that Beasley would have insisted on going to trial. Instead, Beasley seems to infer that he would have still pled guilty, just that he wanted his attorney to get him a better deal.

Accordingly, Beasley failed his burden of proof on both *Strickland* prongs. The trial court's order is thus affirmed.

III. Was Beasley's plea coerced?

Beasley next argues that his guilty plea was not knowing, voluntary, or intelligent because it was the result of alleged coercion. Specifically, Beasley claims his trial counsel and his uncle coerced Beasley into taking the plea deal because they informed Beasley that he could receive a life sentence if he went to trial. The Kentucky Supreme Court recently announced the standard for such claims as follows:

> [Appellant] argues that his guilty plea was constitutionally defective because it was the product of his attorney's coercion . . . . In order to prove ineffective assistance of counsel where a guilty plea has been entered, the movant must establish:
>
> (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.
>
> *Bronk v. Commonwealth*, 58 S.W.3d 482, 486-87 (Ky. 2001) (considering claim of ineffective assistance of counsel brought pursuant to RCr 8.10 motion to withdraw a guilty plea). "[T]he trial court must evaluate whether errors by trial counsel significantly influenced the defendant's decision to plead guilty in a manner which gives the trial court reason to doubt the voluntariness and validity of the plea." *Id*. at 487.

Commonwealth v. Elza, 284 S.W.3d 118, 120-121 (Ky. 2009). Utilizing *Strickland* and *Elza*, and having reviewed the evidence of record, we affirm the trial court's denial of Beasley's claim.

Following a thorough review of the guilty plea colloquy and the evidence presented at the post-conviction hearing, the trial court rejected Beasley's claim. The trial court noted that Beasley was facing 10 to 20 years' imprisonment on the first-degree robbery charge and 20 to 50 or life imprisonment on the murder charge. The evidence on the robbery charge was strong, so Beasley's counsel believed the best he could obtain on that charge was 10 years at 85% parole eligibility, though he admitted beating a man to death for his alcohol would more likely than not result in one receiving a 20-year sentence. Beasley's counsel negotiated minimum sentences on first-degree robbery and first-degree manslaughter charges. He advised Beasley to take the offers.

On the day that Beasley entered his guilty plea, he at first rejected the plea offer because people in the jail told him that he could get less prison time. After being given a while to consider the offer, Beasley eventually took the deal. At his guilty plea colloquy:

> The Court then confirmed with the defendant that it was his desire to enter a guilty plea in this matter, to which the defendant responded that he did want to accept the plea offer of the Commonwealth. The Court specifically asked if anyone had forced him into entering his plea, to which the defendant responded in the negative. The Court inquired whether trial counsel had pressured or forced the defendant to plead guilty. The defendant responded that his attorney had not pressured or forced him to plead guilty. The Court asked if the defendant needed more time to think about the decision to enter a plea of guilt, even offering another day to think about the decision. The defendant responded that he did not need any more time to consider his decision to plead guilty.

> The Court further inquired whether any family members had put pressure on the defendant to plead guilty. The Court specifically asked the defendant if his uncle, who was in the Courtroom during the plea, had pressured the defendant into accepting the terms of the pela agreement. The Court asked, "He hasn't pressured you into doing anything you don't want to has he?" The defendant answered that his uncle had not pressured him. The Court asked the defendant if the Commonwealth Attorney or anyone else had applied any pressure in order to convince him to plead guilty, and he answered no. Following the detailed colloquy, the Court went on to explain the terms of the plea agreement in which the defendant would receive the minimum sentences on Manslaughter Second Degree by Complicity and Robbery First Degree. The defendant also acknowledged that even though others had told him he might do better at trial, in light of the potential maximum sentences, it was in his best interest to enter a guilty plea.
>
> Following the Court's colloquy, the defendant provided a recitation of the facts leading to his indictment and ultimate plea. He testified that he and his co-defendants went looking for Mr. Emberton with the intent of stealing beer from him. He stated that it was his co-defendants who told him that Mr. Emberton had a beer and they went to find him in order to take it. He stated that Mr. Emberton was outside on the street when they found him and that he was struck three times, and the defendant stated that he kicked Mr. Emberton in the stomach while he was on the ground and took the beer. He acknowledged that Mr. Emberton died as a result of the attack.

Order, pp. 18-19.

Later at the post-conviction evidentiary hearing, the uncontroverted evidence was that his trial counsel and Beasley's uncle both told Beasley to take the offer. They each advised Beasley that he was facing a potential life sentence. This evidence conforms with what was elicited during the guilty plea colloquy.

The trial court rejected Beasley's argument for the following reasons:

> The defendant argues that he was pressured by trial counsel and his uncle into pleading guilty in this matter. The defendant's claim is completely refuted by the record in this matter. This Court took great care to inquire of the defendant whether any undue pressure had been put upon him to enter his plea of guilt. Moreover, the defendant evidenced no difficulty in voicing his wishes to the Court and his demeanor was not indicative of distress or intimidation during the guilty plea. The defendant's testimony at the evidentiary hearing further confirms that he was capable of and did, in fact, understand the consequences of his plea and willingly accepted the terms thereof. The defendant's claim that his plea was not knowing, intelligent, and voluntary is without merit in light of the record in this matter.

Order, pp. 20-21.

Having reviewed the guilty plea colloquy and the evidence presented at the post-conviction evidentiary hearing, we agree with the trial court's well-reasoned order. There is nothing to indicate that Beasley's attorney and Beasley's uncle coerced Beasley's guilty plea. It was a fact that Beasley was facing life in prison for the murder. Nothing about that information was coercive, and nothing about the guilty plea colloquy indicates that anyone was coercing Beasley into taking the plea. Accordingly, we affirm the trial court's order on this issue.

IV. Was the transfer hearing invalid?

Finally, we address Beasley's claim that his transfer hearing in district court was invalid because the judge allegedly failed to consider all of the requisite factors and allegedly improperly weighed the factors. Beasley's claim ostensibly is that because no evidence was put forward regarding his maturity or his

participation in a gang, the trial court did not consider all eight factors before deciding to transfer Beasley's case to circuit court.

We need not tarry long on this issue. Having reviewed the transfer hearing, it is apparent that the district court judge considered all of the evidence before him regarding all of the factors. The district court judge "turned explicitly to the factors listed in subpart (b) of [KRS 640.010(2)], discussing the proof as to each factor in turn." *Jackson v. Commonwealth*, 363 S.W.3d 11, 19 (Ky. 2012). *See also Id*. at 13-14 (noting in *Jackson* the district court judge heard no evidence about one of the factors). That no evidence had been presented about two of the factors does not change the fact that the trial court heard all the evidence and considered the factors. We will not permit attorneys to withhold evidence for the purpose of creating error in the proceedings. That the parties were allowed to put on evidence, and that the trial court considered the available evidence in light of the eight factors, is sufficient to satisfy the transfer statutes.

We next consider Beasley's argument that the trial court improperly weighed the factors. Beasley claims the trial court improperly weighed two factors, KRS 640.010(2)(b)(6) ("The prospects of adequate protection of the public") and KRS 640.010(2)(b)(7) ("The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system") in favor of transfer when there was allegedly no evidence supporting the same.

After reviewing the record we disagree that such error was made. Certainly a trial court that has before it the alleged facts of a heinous robbery and murder can reasonably infer that waiver is in the best interests of the public's protection. Likewise, the district court judges of this Commonwealth are certainly familiar with the procedures, services, and facilities of the juvenile justice system. Thus, we find no improper weight was given to these factors by the district court judge in the instant case.

Nonetheless, assuming, *arguendo*, the trial court so erred, there still remained two factors that favored transfer. Pursuant to the statute, if the district court finds "that two (2) or more of the factors . . . are determined to favor transfer, the child may be transferred to Circuit Court[.]" KRS 640.010(2)(c). Here, it is undisputed that the offenses were serious and were against both a person and property. These facts alone satisfy two of the eight transfer prongs. KRS 640.010(2)(b)(1)-(2). There being no disagreement on these two prongs, the district court was entirely within its discretion to transfer the case to circuit court. KRS 640.010(2)(c). Therefore, we affirm the trial court on this issue.

CONCLUSION

An innocent person perished due to Beasley's crimes. Beasley confessed to those crimes and was statutorily eligible for transfer to circuit court to be tried as an adult. Having thoroughly reviewed the record, the trial court's well-reasoned and detailed order, and the numerous arguments presented on appeal, we find no merit to any of Beasley's arguments.

Accordingly, the trial court's order denying Beasley's post-conviction claim is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Krista A. Dolan
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

Gregory C. Fuchs
Assistant Attorney General
Frankfort, Kentucky