

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000240-MR

ANTHONY LANE CARROLL

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE LEWIS B. HOPPER, JUDGE
ACTION NO. 98-CR-00086

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

TACKETT, JUDGE: Anthony Carroll appeals from an order of the Laurel Circuit Court denying his motion to vacate his conviction pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42 without an evidentiary hearing. We affirm.

Carroll was charged with five counts of sodomy in the first degree based on allegations that he anally raped his minor stepson, M.C., prior to adopting the child. At his trial, defense counsel called three witnesses to testify in Carroll's behalf. Kentucky State Trooper Joel Woods testified to his

belief that previous allegations of sexual abuse involving the couple's daughter were fabricated by Carroll's ex-wife in order to gain custody.¹ J.C., the victim's younger brother, testified for the defense, and Carroll himself testified that the allegations arose after he told his daughter that the two of them might move out of state after Carroll's graduation from college in order for him to find a job in his field. Nevertheless, the jury convicted Carroll of all five counts and recommended a sentence of twenty years' imprisonment on each count to run consecutively.

The Kentucky Supreme Court affirmed the conviction and sentence on direct appeal. Carroll subsequently filed a motion to vacate his conviction pursuant to RCr 11.42 alleging that his attorney rendered ineffective assistance of counsel by failing to investigate and call additional witnesses and by declining to inform the trial court that J.C.'s answers were being coached by his stepfather's non-verbal signals. The trial court appointed counsel to assist Carroll by supplementing his RCr 11.42 motion. After considering the allegations presented in Carroll's motion and in his attorney's supplemental filings, the trial court denied the motion without an evidentiary hearing. This appeal followed.

¹ At the time of his trial, both Carroll and his ex-wife, Connie, had remarried. Pursuant to their divorce decree, Carroll had residential custody of the couple's daughter and weekend visitation with M.C. and J.C. who lived with their mother and stepfather.

Carroll first argues that his attorney was ineffective for failing to investigate witnesses and present their testimony at trial. When reviewing an ineffective assistance of counsel claim, we must determine whether trial counsel's performance fell outside of prevailing professional norms and whether, absent the deficient performance, there is a substantial likelihood that the outcome would have been different. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In his motion for post-conviction relief, Carroll alleges that he gave his attorney a list of witnesses that he wanted to testify on his behalf. These included his first wife, present wife, eldest son, mother, sisters, an expert in child sexual abuse and a social worker. Carroll presented no affidavits regarding the testimony that these witnesses would have given, rather he briefly stated what he expected the witnesses' testimony would have been. In order to prevail on his RCr 11.42 motion, Carroll needed to include "facts with sufficient particularity to generate a basis for relief" in his motion. Foley v. Commonwealth, Ky., 17 S.W.3d 878, 890 (2000). We agree with the trial court that Carroll's motion did not meet this burden.

Carroll next contends that the trial court erred in determining that his attorney was ineffective for failing to object to witness coaching. Affidavits from Carroll's mother

and one of his sisters state that J.C. was looking out into the audience during his testimony and that his stepfather, Jeff Leach, was giving him non-verbal cues as to how to answer the questions asked of him. In particular, Carroll's mother claims that Leach shook his head to indicate that J.C. should respond negatively to the question of whether he had ever overheard his mother and Leach discuss using fabricated allegations of abuse in order to gain custody of J.C.'s sister. However, J.C. testified as a witness for the defense and the trial court found that overall his testimony was very favorable to Carroll. Moreover, Carroll himself testified to his belief that the allegations resulted from his ex-wife's desire to obtain full custody of the children because Carroll was considering a move out of state. We agree with the trial court's finding that Carroll has failed to show he was prejudiced by the alleged incident of witness coaching.

Finally, Carroll asserts that the trial court erred in refusing to hold an evidentiary hearing on his RCr 11.42 motion. An evidentiary hearing is only required when there is an issue of fact that cannot be conclusively resolved from the face of the trial record. Standford v. Commonwealth, Ky., 854 S.W.2d 743 (1993). Consequently, the trial court did not act inappropriately in denying Carroll's RCr 11.42 motion without an evidentiary hearing.

For the foregoing reasons, the judgment of the Laurel
Circuit Court is affirmed.

ALL CONCUR.

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