

RENDERED: SEPTEMBER 26, 2003; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2002-CA-001285-MR

LLOYD C. RICHARDSON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURANCE B. VANMETER, JUDGE
INDICTMENT NO. 99-CR-00006

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE AND JOHNSON, JUDGES; AND MILLER, SENIOR JUDGE.¹

DYCHE, JUDGE. In February 1999 Lloyd C. Richardson was convicted of first degree assault and unlawful imprisonment. He was sentenced to fifteen and five years, respectively; the trial court ordered the sentences to be run consecutively for a total

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

of twenty years' imprisonment. The Kentucky Supreme Court affirmed Richardson's conviction on August 24, 2000.

Richardson then sought postconviction relief pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42. Counsel was appointed and a supplementary brief was filed on Richardson's behalf. The trial court denied all relief without an evidentiary hearing on June 5, 2002. Richardson appeals.

Richardson complains that trial counsel's performance was deficient for failing to investigate: (1) appellant's alleged filing of criminal charges versus the victim; (2) the victim's further medical treatment; and (3) the victim's subsequent criminal activity.

Richardson alleges that the first deficiency resulted in counsel's inability to cross-examine the victim regarding her motive to fabricate testimony against Richardson. Had counsel investigated the further medical treatment and subsequent activities of the victim, Richardson continues, there would have been a viable argument that the victim's injuries were not serious enough to sustain a conviction for first degree assault. Therefore, Richardson maintains that he received ineffective assistance of counsel; he insists that the trial court erred in denying relief without first holding an evidentiary hearing.

We cannot agree. Were we to accept Richardson's allegations of deficient performance as true, we nonetheless

remain unconvinced that the outcome of his trial would have been different. Strickland v. Washington, 466 U.S. 668 (1984); accord Gall v. Commonwealth, Ky., 702 S.W.2d 37 (1985).

"Many of the claims of [Richardson] have been raised and disposed of on direct appeal and are not to be heard now under the ruse of ineffective assistance of counsel." Haight v. Commonwealth, Ky., 41 S.W.3d 436, 442-443, cert. denied, 534 U.S. 998 (2001). Our Supreme Court held, in no uncertain terms, that Richardson's victim suffered injuries sufficient to sustain a conviction of first degree assault. We quote from the opinion affirming Richardson's conviction on direct appeal: "Among the many horrible effects of the beating, [the victim] suffered permanent dislocation of her eye socket which resulted in blurred vision, double vision, and vision-related headaches." Thus there is no reasonable probability that investigation into the victim's further medical treatment or activities after she was beaten by Richardson would have changed the outcome of the proceedings. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992).

Nor has Richardson demonstrated prejudice in his initial argument that trial counsel should have investigated alleged criminal complaints sworn by appellant versus the victim. Richardson argues that the evidence was relevant to prove the victim's motive to fabricate testimony that Richardson

was her aggressor. We find nothing in the record to indicate that the jury's verdict would have been different had the contested testimony been allowed. Moreover, we agree with the trial court that the exclusion of this evidence was an issue which should have been addressed on direct appeal. Stanford v. Commonwealth, Ky., 854 S.W.2d 742 (1993).

"An evidentiary hearing is not required about issues refuted by the record of the trial." Haight, supra at 443. Richardson was not entitled to an evidentiary hearing.

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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