

# Commonwealth of Kentucky

## Court of Appeals

NO. 2002-CA-002529-MR

TROY D. MARTIN

APPELLANT

ON REMAND FROM SUPREME COURT OF KENTUCKY  
NO. 2004-SC-000130

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE MARY C. NOBLE, JUDGE  
INDICTMENT NO. 98-CR-00125

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: LAMBERT, MOORE, AND NICKELL, JUDGES.

LAMBERT, JUDGE: Troy Martin appeals the circuit court's denial of collateral relief from his burglary conviction. For the reasons stated herein, we remand this matter to the circuit court for reconsideration.

### **Background**

In December, 1999, Martin was convicted by a jury of first degree burglary, and the circuit court sentenced him to 20 years' imprisonment under the persistent felony offender statute. On direct appeal, Martin contended that the prosecutor made certain

improper remarks during closing argument. In its opinion, the Supreme Court of Kentucky criticized the prosecutor's closing statement but refused to reverse Martin's conviction because his closing argument claim was preserved neither for review nor palpable error.

Following his lack of success on direct appeal, Martin returned to the court of conviction, seeking collateral relief under RCr 11.42. Martin contended that the conviction should be set aside since his trial attorney rendered ineffective assistance by failing to object to the prosecutor's closing argument, thereby failing to preserve the closing argument claim for review before the Supreme Court of Kentucky. In denying relief, the circuit court held that Martin's ineffective assistance of counsel claim was procedurally barred because, on direct appeal, the Supreme Court of Kentucky found that, in addition to being unpreserved, Martin's closing argument claim did not constitute reversible error under the palpable error rule. Thus, rejecting Martin's RCr 11.42 motion, the circuit court did not reach the merits of his ineffective assistance of counsel claim.

Next, Martin appealed the denial of RCr 11.42 relief to a three-judge panel of our Court. In a five-page opinion, the panel agreed with the circuit court's procedural default theory. Martin then petitioned the Supreme Court of Kentucky for relief. And, at long last, he received an opinion that was not unfavorable. The Supreme Court of Kentucky ruled that Martin's ineffective assistance of counsel claim was not in fact procedurally barred and remanded the case to us for a determination of the claim under

the usual *Strickland* standard. See *Martin v. Commonwealth*, 207 S.W.3d 1 (Ky. 2006).  
*Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

### **Analysis**

As a result of the Supreme Court of Kentucky's decision, Martin's ineffective assistance of counsel claim must be addressed on its merits under the usual *Strickland* standard. In its brief, the Commonwealth suggests that we should engage in this determination and rule against Martin on the merits. In his brief, Martin notes that the circuit court has never reached the merits of his ineffective assistance of counsel claim and contends that the matter should be remanded to the circuit court to apply the *Strickland* standard to his claim.

On balance, we are inclined to agree with Martin that his ineffective assistance of counsel claim be remanded to the circuit court for its determination. Moreover, given that the circuit court is more familiar with the original record of the burglary trial as well as counsels' performance therein, we believe that it should be the first court to address any ineffective assistance of counsel claim that has arisen from that trial. Even though we are well aware that remand will cause further delay in the resolution of this action, at this point in the proceedings we believe that a full, fair, and accurate adjudication is always the more important concern.

### **Conclusion**

For the foregoing reasons, we vacate the order denying the 11.42 relief and remand this matter to the circuit court with instruction to determine Martin's RCr 11.42 ineffective assistance of counsel claim on its merits under the usual *Strickland* Rule.

ALL CONCUR.

**BRIEF FOR APPELLANT:**

Richard Edwin Neal  
Frankfort, Kentucky

**BRIEF FOR APPELLEE:**

Gregory D. Stumbo  
Attorney General

Perry T. Ryan  
Assistant Attorney General  
Frankfort, Kentucky