

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000379-MR

JARVIS ROSCOE LITTLE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN P. RYAN, JUDGE
INDICTMENT NO. 88-CR-002077

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: COMBS, DYCHE, AND JOHNSON, JUDGES.

DYCHE, JUDGE. Roscoe Jarvis Little was convicted of wanton murder for the battering death of four-year-old Terrance Shawn Brown. On February 14, 1991, the Kentucky Supreme Court affirmed Little's conviction and sentence of life imprisonment. Little then sought post-conviction relief pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42. The Jefferson Circuit Court denied the motion, and the Kentucky Court of Appeals affirmed. Our Supreme Court granted discretionary review and

remanded the matter to Jefferson Circuit Court for consideration in light of Norton v. Commonwealth, Ky., 63 S.W.3d 175 (2002). The Jefferson Circuit Court again denied RCr 11.42 relief, and Little appeals. We affirm.

It is again necessary to set out the standard of review for claims raised in a collateral attack pursuant to RCr 11.42, alleging ineffective assistance of counsel at the trial. Such a motion is limited to the issues that were not and could not be raised on direct appeal. An issue raised and rejected on direct appeal may not be reconsidered in these proceedings by simply claiming that it amounts to ineffective assistance of counsel. Haight v. Commonwealth, Ky., 41 S.W.3d 436 (2001), citing Sanborn v. Commonwealth, Ky., 975 S.W.2d 905 (1998).

The standards which measure ineffective assistance of counsel have been set out in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); accord Gall v. Commonwealth, Ky., 702 S.W.2d 37 (1985). In order to be ineffective, the performance of defense counsel must be below the objective standard of reasonableness and so prejudicial as to deprive a defendant of a fair trial and a reasonable result. Strickland, supra. It must be demonstrated that, absent the errors by trial counsel, there is a **reasonable probability** that the jury would have reached a different result. See Norton v. Commonwealth, [supra]. The purpose of RCr 11.42 is to provide a forum for known grievances, not to provide an opportunity to research for grievances. Gilliam v. Commonwealth, Ky., 652 S.W.2d 856 (1983); Haight, supra.

The RCr 11.42 motion must set forth all facts necessary to establish the existence of a constitutional violation. The court

will not presume that facts omitted from the motion establish the existence of such a violation. Cf. Skaggs v. Commonwealth, Ky., 803 S.W.2d 573 (1990). The argument by [appellant] that the circuit court failed to use the proper standard in denying his motion is unconvincing.

An evidentiary hearing is not necessary to consider issues already refuted by the record in the trial court. Conclusory allegations which are not supported with specific facts do not justify an evidentiary hearing because RCr 11.42 does not require a hearing to serve the function of discovery. Stanford v. Commonwealth, Ky., 854 S.W.2d 742 (1993).

Hodge v. Commonwealth, Ky., 116 S.W.3d 463, 467-468 (2003)

(emphasis added).

The import of Norton, supra, is that it explicitly overruled Robbins v. Commonwealth, Ky. App., 719 S.W.2d 742, 743 (1987), which held RCr 11.42 movants to the higher standard of proving that, but for counsel's deficiencies, the evidence would have compelled an acquittal. Here, upon remand, the Jefferson Circuit Court correctly noted that it was the Court of Appeals, in affirming the trial court's initial denial of RCr 11.42 relief, that relied, in part, on Robbins. Upon remand, the trial court analyzed its earlier decision in light of Norton, and it again denied Little's request for relief, stating thus:

The Court was satisfied then, as it is now, that the record sufficiently reflected the facts of the case and that Little had failed to offer anything beyond mere speculation that some new evidence might be brought in

at a hearing to exonerate or alter his conviction to anything other than wanton murder. The record reflects that the evidence against Little was overwhelming.

Little's allegations of ineffective assistance of counsel were matters which should have been brought on direct appeal or which were refuted by reference to the record. Hodge, supra. He was not entitled to an evidentiary hearing, nor to any other relief afforded by RCr 11.42.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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