

RENDERED: November 19, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-000595-MR

ERIC GRUNDY

APPELLANT

ON REMAND FROM SUPREME COURT OF KENTUCKY
v. NO. 2004-SC-000575-D

APPEAL FROM MARION CIRCUIT COURT
HONORABLE DOUGHLAS M. GEORGE, JUDGE
ACTION NO. 97-CR-00139

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE, JUDGE; AND EMBERTON, SENIOR
JUDGE.¹

DYCHE, JUDGE: Eric Grundy was sentenced in 1998 to thirty-five
years' imprisonment for robbery, burglary, assault, and the
status offense of persistent felony offender in the first

¹ Senior Judge Thomas D. Emberton, sitting as Special Judge by
Assignment of the Chief Justice pursuant to Section 110 (5)(b)
of the Kentucky Constitution and KRS 21.580.

degree. The Kentucky Supreme Court affirmed Grundy's convictions in 2000. In 2003 the Marion Circuit Court denied Grundy's motion for RCr 11.42 relief, and this Court affirmed that decision in June 2004. The Kentucky Supreme Court then vacated that opinion and ordered the matter remanded to this Court to be considered in light of Wiggins v. Smith, 539 U. S. 510 (2003).

Wiggins reaffirmed the United States Supreme Court holding in Strickland v. Washington, 466 U.S. 668 (1984), that, in order to establish ineffective assistance of trial counsel, a movant must prove "that counsel's performance was deficient and that the deficiency prejudiced the defense." Wiggins, 539 U.S. at 521. The decision in Wiggins then focused on whether counsel's allegedly deficient performance was "reasonable . . . under prevailing professional norms." Id. at 523 (citing Strickland, supra, at 688). The Wiggins court ultimately found that trial counsel's performance was not reasonable and that its deficiencies did affect the outcome of the proceedings.

No such proffer of either prong of Strickland is found here. We have re-examined Grundy's allegations in light of the Wiggins decision and hold that the trial court properly denied Grundy's RCr 11.42 motion.

The judgment of the Marion Circuit Court is affirmed.

ALL CONCUR.

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