

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-001509-MR

TEKO HATFIELD

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE BARRY WILLETT, JUDGE  
ACTION NO. 98-CR-000958

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: COMBS, CHIEF JUDGE; GUIDUGLI AND SCHRODER, JUDGES.

COMBS, CHIEF JUDGE: Teko Hatfield appeals an order of the Jefferson Circuit Court which summarily denied his motion to vacate his sentence pursuant to RCr<sup>1</sup> 11.42. He claims that his allegations of ineffective assistance of trial counsel cannot be resolved on the face of the record. After our review of the record, we agree. Therefore, we vacate and remand this matter for an evidentiary hearing. Fraser v. Commonwealth, Ky., 59 S.W.3d 448, 452 (2001).

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<sup>1</sup> Kentucky Rules of Criminal Procedure.

Hatfield and his co-defendant, Tyrone Thomas, were indicted on April 16, 1998, on charges arising from the shooting death of Edward L. Powers. Thomas pled guilty to an amended charge of tampering with physical evidence and of second-degree persistent felony offender (PFO II). He was sentenced to eight years in prison.

At Hatfield's trial, Thomas testified that he had sold Hatfield the rifle used in the shooting two weeks before the incident. He also testified that Hatfield brought the weapon to the victim's house, pointed the gun at several people, and after a struggle, discharged the gun, killing Powers. Hatfield was convicted of wanton murder and first-degree robbery. He was sentenced to life without parole for twenty-five years for the murder and to twenty years enhanced to life for the robbery. Supreme Court of Kentucky affirmed his conviction.

Following the denial of his appeal, Hatfield, *pro se*, filed a motion for relief pursuant to RCr 11.42. As grounds for his motion, Hatfield alleged that trial counsel rendered ineffective assistance by failing: (1) to interview a potential witness, Bernica Tinsley, to whom Thomas had confessed to shooting the victim; and (2) to subpoena and call as a witness Starkisha Claycomb, Thomas's girlfriend at the time of the shooting, who saw Thomas with the weapon on the day of the shooting. The Commonwealth did not respond to the motion.

In denying Hatfield's motion, the trial court reasoned that trial counsel "might have concluded . . . that the two witnesses Mr. Hatfield wanted to testify might not have been credible." It further speculated:

There are any number of legitimate reasons why Mr. Hatfield's two attorneys would choose not to call the witnesses mentioned now by Mr. Hatfield, despite the stories they are now prepared to convey. Mr. Hatfield argues that their decision was "inactivity" rather than trial strategy. However, choosing not to pursue certain witnesses is action, not inactivity, and could be considered as part of the trial strategy of a reasonably effective attorney in that particular situation. . . . Mr. Hatfield's current Motion and Memorandum of Support do not delve into the reasons why his lawyers excluded the two witnesses. Accordingly, he does not come close to rebutting the strong presumption raised in Moore [v. Commonwealth, Ky., 983 S.W.2d 479 (1998)], or of satisfying the tests of Strickland [v. Commonwealth, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)].

In this appeal, Hatfield argues that the trial court erred in failing to conduct an evidentiary hearing on the issues raised in his motion. In Fraser v. Commonwealth, supra, the Kentucky Supreme Court addressed the proper procedure that a trial court must follow when considering motions for appointment of counsel and for an evidentiary hearing under RCr 11.42. Fraser held that a trial court must determine whether the allegations in the motion can be resolved on the face of the record. Where there is a material issue of fact that cannot be

conclusively resolved (either conclusively proven or refuted) by an examination of the record alone, a hearing is required.

In this case, the judge heard no testimony but nonetheless determined that counsel's failure to interview a witness with exculpatory evidence might have been attributable to a belief that she was not credible. The court also found that counsel's failure to call Claycomb or Tinsley as a witness "could be considered" trial strategy. However, the record is wholly silent as to why these witnesses were disregarded by Hatfield's attorney or why the exculpatory information that they allegedly possessed was not pursued in defense of Hatfield. Thus, Hatfield was entitled to an evidentiary hearing on his motion, and failure to grant the hearing was error.

The Commonwealth contends that because Hatfield was convicted of wanton murder rather than intentional murder, Tinsley's testimony that Thomas admitted to the shooting "would not have been exculpatory." Thomas was the Commonwealth's chief witness against Hatfield. Testimony that Thomas admitted to picking up the gun and shooting Powers as well as evidence that he continued to control the rifle up to the day of the shooting would have had a considerably negative impact on his credibility and on the Commonwealth's case against Hatfield. If these allegations were true, the consequent impact on Hatfield's defense would have been significant.

It is well established that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. While counsel may have had a reasonable explanation for failing to interview Tinsley or to subpoena Claycomb as a witness, counsel should have been examined in a hearing by the trial court. The court erred in offering its own hypothetical reasons for counsel's possible failure to perform according to professional standards instead of requiring counsel to make his own explanation to the court.

The order of the Jefferson Circuit Court is vacated, and this matter is remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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