

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-002399-MR

JIMMY WOLFORD

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE EDDY COLEMAN, JUDGE  
ACTION NO. 99-CR-00029

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

COMBS, CHIEF JUDGE: Jimmy Wolford appeals from an order of the Pike Circuit Court that denied his motion for relief brought pursuant to RCr<sup>1</sup> 11.42. Alleging ineffective assistance of his defense counsel, he seeks to vacate a 1999 judgment of conviction for murder that imposed a forty-year prison sentence. As we have found no error in the order of the trial court denying relief, we affirm.

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1 Kentucky Rules of Criminal Procedure.

During the early morning hours of September 29, 1998, Wolford had a violent argument with his girlfriend, Patricia Skeens. Skeens's young daughters were awakened by the uproar and witnessed Wolford choking their mother. One of Skeens's daughters heard Wolford order Skeens to "[p]ick out the clothes you want to die in." The girls ran to a neighbor's house and dialed 911. Police responded to the residence but did not talk with Skeens, who remained in hiding at the home. Officers left the scene at approximately 2:36 a.m.

Shortly after 3:00 a.m., Wolford flagged down a motorist, Johnny Lane. Wolford indicated to Lane that he needed assistance in transporting his girlfriend to the hospital in Grundy, Virginia. Lane testified that Skeens was badly burned; in fact, he described her as "charred." When Skeens arrived at the hospital, nurses noted that she smelled of oil and gasoline and that her body felt greasy. Over sixty-five percent of Skeens's body was critically burned -- with the most extensive damage to her face.

She was first transported to UVA Medical Center and later to the University of Louisville Hospital. Her medical report of December 16, 1998, from the Louisville hospital indicated that Skeens had sustained full thickness burns to her scalp, face, and neck. She had no external ear on either side of her head. Half of her face was described merely as

hypertrophic granulation tissue. Her mouth was drawn and her eyes could not be closed. Her neck could rotate only five degrees. Only parts of her fingers remained, and she could not move her hands or wrists. Parts of her lower extremities had been used as harvest sites for extensive skin grafting. Prior to being intubated for surgery in September, Skeens told several nurses that Wolford had burned her. Skeens lost consciousness and died from her injuries three months later.

In January 1999, a Pike County grand jury indicted Wolford for murder. This indictment superseded a previous indictment that had charged Wolford with first-degree assault as a result of his attack of Skeens on September 29. After Skeens died of her injuries, the grand jury acted quickly to amend the original indictment to charge Wolford with murder. On February 1, 1999, Wolford was arraigned on the murder charge.

In September 1999, Wolford was tried by a jury. He testified in his own defense, denying any intention to harm Skeens. In his testimony, Wolford indicated that after the police had left the residence, he and Skeens began to repair some lawn equipment. He guessed that Skeens had been doused with gasoline while he was refueling the weed-eater. According to Wolford, the weed-eater ignited unexpectedly when he started it, and Skeens, standing nearby, caught fire.

The police investigation uncovered nothing to support Wolford's account of events. Instead, investigators found a burned kitchen chair and burn marks on the floor of Skeens's residence. They also retrieved a milk jug of gasoline beneath the kitchen table.

The jury found Wolford guilty of murder. The trial court characterized him as a violent offender and sentenced him to forty-years' imprisonment. Wolford appealed directly to the Supreme Court of Kentucky, which affirmed his conviction and sentence on March 22, 2001.

On April 4, 2002, Wolford filed a *pro se* motion to vacate pursuant to the provisions of RCr 11.42. He alleged several instances of ineffective assistance of counsel. In an extensive opinion and order entered on October 1, 2003, the Pike Circuit Court denied relief. This appeal followed.

In order to establish ineffective assistance of counsel, a defendant must satisfy a two-part test showing both deficiency of counsel's performance and actual prejudice resulting from the deficiency. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The defendant bears the burden of overcoming a strong presumption that counsel's assistance was constitutionally sufficient and that he received a fundamentally fair trial. Id. at 689.

Wolford contends that defense counsel was ineffective for failing to object to the superseding indictment. He also argues that the grand jury's indictment charging him with murder was defective since it failed to indicate his mental state at the time of the alleged offense and that trial counsel should have challenged it. He charges that counsel's failure to file a bill of particulars resulted in his inability to prepare fully for trial.

Wolford's contentions have no foundation or merit. RCr 6.10 states that the indictment must contain "a plain, concise and definite statement of the essential facts constituting the specific offense with which the defendant is charged" and "for each count the official or customary citation of any applicable statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated[.]" RCr 6.10 adopted the principle of notice pleading. That abbreviated style has been construed to be sufficient "if the indictment fairly informs the defendant of the nature of the crime with which he is charged, without detailing the 'essential factual elements.'" Wilson v. Commonwealth, 445 S.W.2d 446, 447 (Ky. 1969).

The superseding indictment charged a violation of KRS<sup>2</sup> 507.020, which provides in pertinent part as follows:

A person is guilty of murder when:  
(a) With intent to cause the death of another person, he causes the death of such person . . . ; or  
(b) . . . under circumstances manifesting extreme indifference to human life, he wantonly engages in conduct which creates a grave risk of death to another person and thereby causes the death of another person.

Reference to that statute put Wolford on notice that he was charged with murdering Skeens either intentionally or wantonly under circumstances manifesting extreme indifference to human life. The indictment recited as follows: "[Wolford] murdered [Skeens] by pouring or throwing a flammable liquid on her and igniting it. . . ." The indictment was not flawed; consequently, defense counsel was not ineffective for failing to challenge it.

Wolford also contends that his defense counsel was ineffective for failing to file a motion for a bill of particulars. However, Wolford's first lawyer filed a detailed discovery motion and a motion for a bill of particulars. Wolford's subsequent defense attorney sought and was granted a continuance to allow him to prepare adequately for trial. Counsel vigorously defended Wolford by filing numerous pre-trial motions -- including a motion to suppress Wolford's statements

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<sup>2</sup> Kentucky Revised Statutes.

to the police as well as motion to exclude statements made by Skeens to medical personnel treating her.

Wolford next claims that defense counsel was ineffective for failing to object to his sentencing as a violent offender pursuant to the provisions of KRS 439.3401. He argues that since the jury did not determine that he was a violent offender, the trial judge had no authority to do so.

The violent offender parole ineligibility provisions of KRS 439.3401 require violent offenders (who are sentenced to a term of years) to serve at least eighty-five (85) percent of the sentence imposed against them before being released on probation or parole. The term "violent offender," as used in the statute, includes any person who has been convicted of a capital offense, Class A felony, or Class B felony involving the death of a victim or serious physical injury to a victim. The jury found that Wolford murdered the victim in this case. Murder is a capital offense. KRS 507.020. The trial court's ruling was wholly appropriate. See Brooks v. Commonwealth, 114 S.W.3d 818 (Ky. 2003). Additionally, the Supreme Court of Kentucky considered Wolford's sentence and affirmed the applicability of KRS 439.3401. Wolford was properly treated as a violent offender for sentencing purposes, and defense counsel did not err by failing to raise an objection.

Finally, Wolford contends that defense counsel erred by failing to advise him to plead guilty to the original indictment that charged him with assault before the grand jury had the opportunity after Skeens's death to amend the indictment to include murder. He complains that counsel never took the time to explain that the assault charge could be amended to murder if Skeens died -- or that he might face a lengthier sentence should she die. Wolford contends that if he had received such advice, "he would certainly have entered a plea of guilty to the charge of assault and avoided the possibility that he would be charged with the more serious crime of murder." Reply brief at 4.

He himself contradicts these allegations by his own sworn statement contained in an affidavit that he filed on September 18, 2002, stating as follows:

1. In October of 1998, I was indicted by a Pike County grand jury for assault in the first degree upon Patricia Skeens.
2. I knew that if Patricia died I would probably be indicted for murder.

Wolford had originally complained that his defense counsel had secured a favorable plea offer from the Commonwealth before Skeens died but had failed to communicate it to him. And then the indictment was superseded to charge him with murder. He tendered an affidavit to bolster this allegation earlier in the proceedings. He abandoned this argument, however, after the

prosecuting Assistant Commonwealth Attorney filed an affidavit stating that no plea offer of any kind had ever been made. These statements all serve to contradict Wolford's more recent contention that he was prejudiced by counsel's failure to discuss with him the consequences of Skeens's death. He was fully aware that he would face a murder charge and a stiffer penalty if Skeens died. He has stated no basis for relief on this ground.

The Pike Circuit Court properly denied Wolford the post-conviction relief he sought. Therefore, we affirm its order in all respects.

ALL CONCUR.

BRIEF FOR APPELLANT:

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